

Legislative Update

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Biographical Information

Robert Dawson holds the Bryant Smith Chair in Law at the University of Texas at Austin School of Law. He received his B.A. degree from the University of Missouri in 1960, his Doctor of Jurisprudence degree from Washington University in 1963 and his Doctor of Judicial Science degree from the University of Wisconsin in 1969. From 1964 to 1967 he was an Assistant Professor of Law at Washington University. He has been on the faculty of the University of Texas School of Law since 1967. In addition to his academic positions, he has been both a public defender and prosecutor. Dr. Dawson was the principal draftsman of Title 3 of the Texas Family Code and of the determinate sentence act. He was also involved in much of the drafting of the 1995 re-writing of Title 3. From 1967 to 1987, he was the Juvenile Law Editor of the State Bar of Texas Family Law Section Newsletter. With the creation of the Juvenile Law Section of the State Bar in 1987, he became the Editor of the State Bar of Texas Juvenile Law Section Newsletter. He has given lectures on juvenile law to probation officers and attorneys throughout the state. He is the author and co-author of several published books, articles, and law school coursework on the subjects of criminal procedure and juvenile law.

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1 **Family Code**

2
3 **Family Code § 51.02. Definitions**

4 In this title:

5 (16) "Traffic offense" means:

6 (A) a violation of a penal statute cognizable under Chapter 729, Transportation Code, except for conduct for
7 which the person convicted may be sentenced to imprisonment or confinement in jail;

8 ~~(i) conduct constituting an offense under Section 521.457, Transportation Code;~~

9 ~~(ii) conduct constituting an offense under Section 550.021, Transportation Code;~~

10 ~~(iii) conduct constituting an offense punishable as a Class B misdemeanor under Section 550.022,~~
11 ~~Transportation Code;~~

12 ~~(iv) conduct constituting an offense punishable as a Class B misdemeanor under Section 550.024,~~
13 ~~Transportation Code; or~~

14 ~~(v) conduct constituting an offense punishable as a Class B misdemeanor under Section 550.025,~~
15 ~~Transportation Code}; or~~

16 (B) a violation of a motor vehicle traffic ordinance of an incorporated city or town in this state.

17
18 **Comment**

19 This section redefines traffic offense by excluding from its definition any offense that would be a traffic
20 offense except it carries a punishment of incarceration. That is the principle the legislature has enacted over the past
21 three sessions on an offense by offense basis. This amendment enacts the principle itself, thus eliminating the need
22 each session to remove another offense from the traffic offense category. An example is the offense of contesting
23 speed which was made a B misdemeanor by the last legislature. Had this amendment been in place at the time, it
24 would have automatically removed it from the traffic offense category and made it delinquent conduct.

25
26 **Family Code § 51.03. Delinquent Conduct; Conduct Indicating a Need for Supervision**

27 (d) It is an affirmative defense to an allegation of conduct under Subsection (b)(2) that one or more of the
28 absences required to be proven under that subsection have been excused by a school official or ~~[should be]are~~
29 excused by the court or that one or more of the absences ~~[was] were~~ involuntary if there are insufficient unexcused
30 voluntary absences remaining to constitute truancy. The burden is on the respondent to show by a preponderance of
31 the evidence that the absence has been or should be excused or that the absence was involuntary. A decision by the
32 court to excuse an absence for purposes of this subsection does not affect the ability of the school district to
33 determine whether to excuse the absence for another purpose.

34
35 **Comment**

36 This section and Section 25.094 of the Education Code are amended to make it clear that the affirmative
37 defense of excused absences or involuntary absences apply to defeat a proceeding for truancy or failure to attend
38 school only when there are insufficient unexcused and voluntary absences remaining to constitute a violation of law.

1 **Family Code § 51.07. Transfer to Another County for Disposition**

2 ~~[(a)]~~When a child has been found to have engaged in delinquent conduct or conduct indicating a need for
3 supervision under Section 54.03 of this code, the juvenile court~~[- with the consent of the child and appropriate adult
4 given in accordance with Section 51.09 of this code,]~~ may transfer the case and transcripts of records and documents
5 to the juvenile court of the county where the child resides for disposition of the case under Section 54.04 of this
6 code. Consent by the receiving court is not required.

7 ~~[(b) When a child who is on probation moves with his family from one county to another, the juvenile court may
8 transfer the case to the juvenile court in the county of the child's new residence if the transfer is in the best interest
9 of the child. In all other cases of transfer, consent of the receiving court is required. The transferring court shall
10 forward transcripts of records and documents in the case to the judge of the receiving court.]~~

11
12 **Comment**

13 This section is amended to speak only to transfer of cases to a different county for disposition. The first
14 amendment in old Subsection (a) eliminates the requirement that the child consent to transfer for disposition in the
15 child's county of residence. The second amendment restates current law: The county of residence to which a case is
16 transferred for disposition has no right to refuse to receive the transfer.

17 Subsection (b) is repealed, since it is the subject of the next few new sections.

18
19 **Family Code § 51.071. Transfer of Probation Supervision Between Counties: Legislative Findings and
20 Definitions**

21 (a) The legislature finds

22 (1) that children and their families in Texas are becoming increasingly mobile and that children on
23 probation frequently move with or without their families to other counties in the state;

24 (2) that when children on probation move from one county to another, it is in the interests of the child,
25 his or her family, and society that probation supervision continue with as little interruption as possible;

26 (3) that if a child on probation in a county to which probation has been transferred violates a condition
27 of probation, it is important that appropriate legal consequences not be impeded by the fact of transfer;

28 (4) that numerous issues are raised by transfer of probation between counties that are not currently
29 addressed by law but which should be resolved;

30 (5) that the county to which supervision has been transferred should provide similar supervision and
31 services to transferred children that it provides to children adjudicated in that county; and

32 (6) that the current informal system of courtesy supervision provides neither the assistance to the child
33 nor the protection of the public that should be provided.

34 (b) The informal practice known as "courtesy supervision" is hereby abolished.

35 (c) In Sections 51.071 through 51.074,

36 (1) sending county means that county that originally placed the child on probation or that assumed
37 permanent supervision of the child under an inter-county transfer of probation supervision;

38 (2) receiving county means that county to which the child has moved or intends to move his or her
39 residence.

1 **Comment**

2 In calendar year 2003, there were 1712 cases placed under informal courtesy supervision arrangements and
3 647 transfers of jurisdiction to supervise probation in Texas. Thus, in 2003 almost 2400 children were placed on
4 supervision in a county other than the county where they were originally placed on probation. In that same year, over
5 3700 children were being supervised by courtesy supervision or transfer of supervision.

6 In some situations because of the lack of legal regulation of this process children on probation are residing in
7 a county without probation supervision from either the county where they were placed on probation or the county
8 where they are currently residing. These children are not absconders, but have fallen through the cracks of the
9 system and are not being provided the supervision and services they should receive.

10 These legislative findings are designed to aid officials who operate the juvenile justice system and the trial and
11 appellate courts in interpreting the new provisions that follow.

12 Subsection (b) abolishes the use of courtesy supervision for offenses or conduct engaged in on or after
13 September 1, 2005, the effective date of this legislation. Courtesy supervision and transfer of probation supervision
14 will be replaced then by a combination of interim supervision and permanent supervision, as spelled out in the
15 sections that follow.

16 Subsection (c) defines sending county and receiving county. The sending county can be either the county
17 that originally placed the child on probation or the county that has assumed permanent supervision under an inter-
18 county transfer when the child has moved yet again.

19
20 **Family Code § 51.072. Transfer of Probation Supervision Between Counties: Interim Supervision**

21 (a) When a child on probation moves or intends to move his or her place of residence to another county and
22 intends to remain in that county for more than 60 days, the probation department providing supervision shall request
23 the probation department in the county to which the child resides, has moved or intends to move to provide interim
24 supervision of the child.

25 (b) The probation department in the county to which the child moved or intends to move may refuse the
26 request to provide interim supervision only if:

27 (1) the residence of the child in the county is in a residential placement facility arranged by the
28 requesting county, or

29 (2) the residence of the child is in a foster care placement arranged by the Department of Family and
30 Protective Services.

31 (c) Interim supervision may be for any period of time not more than 180 days.

32 (d) The probation department's request to provide interim supervision shall be initiated by electronic
33 communication to the probation department officer designated as the inter-county transfer officer or, in the absence
34 of such a designation, to the chief juvenile probation officer.

35 (e) The following information shall be provided in the initial contact:

36 (1) the child's name, sex, age and date of birth,

37 (2) the name(s), address, date of birth, social security number or driver's license number of the person(s)
38 with whom the child proposes to reside or is residing in the receiving county,

39 (3) the offense or offenses for which the child is on probation supervision,

40 (4) the length of the probation term,

41 (5) a brief summary of the child's history of referrals,

42 (6) a brief statement of any special needs of the child, and

1 (7) the reason for the child residing in the county in which interim supervision is sought.

2 (f) The probation department shall send within 5 business days after a county has accepted interim
3 supervision a copy of the following items of information:

4 (1) the petition, adjudication and disposition orders, including the child's thumbprint,

5 (2) the conditions of probation,

6 (3) the social history report,

7 (4) any psychological or psychiatric reports,

8 (5) the DPS CR 43J form or tracking incident number,

9 (6) law enforcement incident report(s) concerning the offense(s) for which the child is on probation
10 supervision,

11 (7) any sex offender registration information,

12 (8) probation department progress reports and any other pertinent documentation for the probationer,

13 (9) case plans,

14 (10) the TJPC Standard Assessment Tool results,

15 (11) computerized referral and case history, including disposition,

16 (12) birth certificate,

17 (15) social security number or social security card, if available,

18 (14) name, address and phone number of the contact person in the sending county probation
19 department, and

20 (15) Title IV-E eligibility screening information, if available,

21 (16) the address for forwarding funds collected,

22 (17) school records and immunization records in possession of the department, and

23 (18) victim information.

24 (g) The probation department in the receiving county shall supervise the child under the probation conditions
25 imposed by the sending county and provide similar services it would provide a child placed on probation under those
26 same conditions in that county. Upon request of the juvenile probation department in the receiving county, a
27 juvenile court in that county may modify the original probation conditions and impose new conditions using the
28 procedures of Section 54.05. A financial probation condition imposed by the sending county and the length of the
29 probation term may not be modified under this section. A cause number shall identify the modification proceedings
30 in the receiving county.

31 (h) A juvenile court in the sending county may revoke probation for a violation of a condition it has imposed
32 only if that condition has not been specifically modified or replaced by the juvenile court of the receiving county.
33 Only a juvenile court in the receiving county may revoke probation for violation of a condition of probation it has
34 modified or imposed.

35 (i) If a child is reasonably believed to have violated a condition of probation imposed by a juvenile court of
36 the sending county, a juvenile court of the sending county or the receiving county may issue a directive to apprehend
37 and may detain the child in a certified detention facility, as in other cases of violation of probation. In order to
38 respond to the violation of the sending county's probation conditions,

39 (1) the receiving county may by its juvenile court modify the conditions of probation or extend its term,

40 or

41 (2) the receiving county juvenile court may require that the sending county resume its direct supervision
42 of the child. Upon receiving such a directive, the probation department of the sending county shall make the

- 1 arrangements necessary for the prompt transportation of the child back to the sending county at the expense of the
2 sending county.
3 (j) The receiving county probation department shall be entitled to any probation supervision fees collected.
(k) The sending county shall be financially responsible

1 Subsection (e) specifies the information that should accompany the request, while subsection (f) specifies
2 those documents from the clerk's file and the probation department's files that should be sent to the receiving
3 county once it has agreed to accept interim supervision of the child.

4 Subsection (g) provides that the ground rules for supervision are the conditions of probation established by a
5 juvenile court in the sending county unless and until they are changed by a juvenile court in the receiving county. In
6 the courtesy supervision informal practice, the supervising department was stuck with the conditions imposed by the
7 sending county, whether they fit current needs or not. However, under interim supervision, the probation
8 department can ask the juvenile court to modify or supplement those conditions with conditions of its own. Under
9 this authorization, the juvenile court in the receiving county could replace all of the sending county's probation
10 conditions with those of its own, many of which might be identical. The judicial mechanism for modifying these
11 conditions is a motion to modify under Section 54.05. The child is entitled to be represented by counsel at a hearing
12 under 54.05, but counsel is not mandatory since revocation is not being sought. Under Section 54.05, it would also
13 be possible for the child and a parent to waive court hearing on the modification request.

14 Subsection (h) allocates authority to revoke probation. If the violation was of an unmodified and unreplaced
15 condition imposed by the sending county, only a court in that county has the authority to revoke. However, if the
16 violation was of a condition modified or imposed by the receiving county, then only that court can revoke.

17 Subsection (i) provides that if the violation is of a sending county condition, the sending or receiving county
18 can detain the child in its facility, as in other cases of probation violation. The receiving county may respond to the
19 violation by modifying or extending the probation term (but not by revocation) or may require the sending county to
20 resume direct supervision of the child. In the latter event, the sending county must resume custody of the child and
21 transport him or her back to the sending county.

22 If the violation is of a condition modified or imposed by the receiving county, then normal procedures for
23 detention and modification/revocation apply, as in any other case of violation of a condition of probation.

24 Subsection (j) obligates the receiving county to collect funds required to be paid by the probation condition
25 and allocates those funds between the two counties.

26 Subsection (k) obligates the sending county to pay for any special treatment or placement it has required by
27 its own probation conditions.

28 Subsection (l) terminates interim supervision at 180 days. After the child has resided in the receiving county
29 for 180 days, permanent supervision automatically transfers to the receiving county. Section 51.073 sets out the
30 features of permanent supervision.

31 Subsection (m) requires that a progress report must be provided to the sending county every ninety days.

32 33 **Family Code § 51.073. Transfer of Probation Supervision Between Counties: Permanent Supervision**

34 (a) Upon transfer of permanent supervision, the juvenile court of the sending county shall order the
35 probation department to send to the probation department of the receiving county the order of transfer. Upon
36 receipt of the order of transfer, the probation department of the receiving county shall cause that order, the petition,
37 order of adjudication, order of disposition, and conditions of probation to be filed with the clerk of the juvenile court.

38 (b) The juvenile court shall cause the child to be brought before it to impose conditions of probation
39 supervision. The child shall be represented by counsel as provided by Section 51.10.

40 (c) Once permanent supervision has been transferred to the receiving county, full responsibility for selecting
41 and imposing conditions of probation, providing supervision, modifying conditions and revoking probation are with
42 the receiving county. The sending county has no further jurisdiction over the case.

1 **Comment**

2 Compared to interim supervision, the terms of permanent supervision are easy to state. The entire
3 responsibility for supervising the probationer is assumed by the receiving county, as in the case of transfer of
4 jurisdiction under current law. Thereafter, all legal relationship between the sending county and the supervision of
5 the child is permanently severed. We have attempted in this section to streamline the process of transferring
6 permanent supervision.

7 Subsection (a) requires the juvenile court to enter an order of transfer to be sent by the juvenile probation
8 department to the juvenile probation department in the receiving county. Upon receipt, the department files the
9 necessary documents with the juvenile court's clerk of court.

10 Subsection (b) requires an "arraignment" of the child before the juvenile court of the receiving county. At
11 that proceeding, the juvenile court will impose conditions of permanent supervision. Since this is a dispositional
12 proceeding under Section 54.04, there is a mandatory right to counsel at that proceeding. At the conclusion of that
13 court appearance, the child "belongs" to the receiving county.

14 Subsection (c) provides that full authority and responsibility thereafter rests with the receiving county and
15 the sending county has no further legal relationship to the case.
16

17 **Family Code § 51.074. Transfer of Probation Supervision Between Counties: Deferred Prosecution**

18 Interim supervision, but not permanent supervision, may be transferred to the county where a child on
19 deferred prosecution resides or has moved his or her place of residence.
20

21 **Comment**

22 This section permits interim supervision to be transferred when a child on deferred prosecution resides in or
23 moves to a different county. Permanent supervision is not authorized, since the maximum term of deferred
24 prosecution is 180 days.
25

26 **Family Code § 51.075. Collaborative Supervision Between Adjoining Counties**

27 (a) If a child on probation supervision in one county spends substantial time in an adjoining county, such as
28 by residing, attending school or working in that county, the juvenile probation departments of the two counties may
29 enter into a collaborative supervision arrangement regarding the child.

30 (b) Under such an arrangement, the probation department in the adjoining county may authorize its officers
31 to provide supervision and services to the child as agents of the probation department in the county in which the
32 child was placed on probation. Periodic oral, electronic, or written reports shall be made from the officers providing
33 supervision and services in the adjoining county to the officer supervising the child in the county in which the child
34 was placed on probation.

35 (c) Sole authority to modify, amend, extend, or revoke probation remains with the juvenile court of the
36 county in which the child was placed on probation.
37

38 **Comment**

39 This section authorizes a limited form of "courtesy supervision" that addresses a special situation in which the
40 child is being supervised by the probation department in one county but spends substantial time in an adjoining
41 county. The child and society benefit if the child is being supervised in the county where he spends his time as well as
42 in the county that placed him on probation. Currently, these collaborative arrangements are handled informally as a

1 species of courtesy supervision. But because courtesy supervision is abolished by Section 51.071(b), it becomes
2 necessary to give statutory recognition to this beneficial practice. Because we are dealing with adjoining counties,
3 there is no justification for a transfer of supervision from one county to another—effective direct supervision can be
4 provided by the county that placed the child on probation even if substantially all of his or her time is spent in an
5 adjoining county.

6

7 **Family Code § 51.095. Admissibility of a Statement of a Child**

8 (a) Notwithstanding Section 51.09, the statement of a child is admissible in evidence in any future proceeding
9 concerning the matter about which the statement was given if:

10 (1) the statement is made in writing under a circumstance described by Subsection (d) and:

11 (A) the statement shows that the child has at some time before the making of the statement
12 received from a magistrate a warning that:

13 (i) the child may remain silent and not make any statement at all and that any statement that
14 the child makes may be used in evidence against the child;

15 (ii) the child has the right to have an attorney present to advise the child either prior to any
16 questioning or during the questioning;

17 (iii) if the child is unable to employ an attorney, the child has the right to have an attorney
18 appointed to counsel with the child before or during any interviews with peace officers or attorneys representing the
19 state; and

20 (iv) the child has the right to terminate the interview at any time;

21 (B) and:

22 (i) the statement must be signed in the presence of a magistrate by the child with no law
23 enforcement officer or prosecuting attorney present, except that a magistrate may require a bailiff or a law
24 enforcement officer if a bailiff is not available to be present if the magistrate determines that the presence of the
25 bailiff or law enforcement officer is necessary for the personal safety of the magistrate or other court personnel,
26 provided that the bailiff or law enforcement officer may not carry a weapon in the presence of the child; and

27 (ii) the magistrate must be fully convinced that the child understands the nature and contents
28 of the statement and that the child is signing the same voluntarily, and if a statement is taken, the magistrate must
29 sign a written statement verifying the foregoing requisites have been met;

30 (C) the child knowingly, intelligently, and voluntarily waives these rights before and during the
31 making of the statement and signs the statement in the presence of a magistrate; and

32 (D) the magistrate certifies that the magistrate has examined the child independent of any law
33 enforcement officer or prosecuting attorney, except as required to ensure the personal safety of the magistrate or
34 other court personnel, and has determined that the child understands the nature and contents of the statement and
35 has knowingly, intelligently, and voluntarily waived these rights;

36 (2) the statement is made orally and the child makes a statement of facts or circumstances that are
37 found to be true and tend to establish the child's guilt, such as the finding of secreted or stolen property, or the
38 instrument with which the child states the offense was committed;

39 (3) the statement was res gestae of the delinquent conduct or the conduct indicating a need for
40 supervision or of the arrest;

41 (4) the statement is made:

42 (A) in open court at the child's adjudication hearing;

1 (B) before a grand jury considering a petition, under Section 53.045, that the child engaged in
2 delinquent conduct; or

3 (C) at a preliminary hearing concerning the child held in compliance with this code, other than at a
4 detention hearing under Section 54.01; or

5 (5) subject to subsection (f), the statement is made orally under a circumstance described by Subsection
6 (d) and the statement is recorded by an electronic recording device, including a device that records images, and:

7 (A) before making the statement, the child is given the warning described by Subdivision (1)(A) by a
8 magistrate, the warning is a part of the recording, and the child knowingly, intelligently, and voluntarily waives each
9 right stated in the warning;

10 (B) the recording device is capable of making an accurate recording, the operator of the device is
11 competent to use the device, the recording is accurate, and the recording has not been altered;

12 (C) each voice on the recording is identified; and

13 (D) not later than the 20th day before the date of the proceeding, the attorney representing the
14 child is given a complete and accurate copy of each recording of the child made under this subdivision.

15 (b) This section and Section 51.09 do not preclude the admission of a statement made by the child if:

16 (1) the statement does not stem from interrogation of the child under a circumstance
17 described by Subsection (d); or

18 (2) without regard to whether the statement stems from interrogation of the child under a circumstance
19 described by Subsection (d), the statement is voluntary and has a bearing on the credibility of the child as a witness.

20 (c) An electronic recording of a child's statement made under Subsection (a)(5) shall be preserved until all
21 juvenile or criminal matters relating to any conduct referred to in the statement are final, including the exhaustion of
22 all appeals, or barred from prosecution.

23 (d) Subsections (a)(1) and (a)(5) apply to the statement of a child made:

24 (1) while the child is in a detention facility or other place of confinement;

25 (2) while the child is in the custody of an officer; or

26 (3) during or after the interrogation of the child by an officer if the child is in the possession of the
27 Department of Protective and Regulatory Services and is suspected to have engaged in conduct that violates a penal
28 law of this state.

29 (e) A juvenile law referee or master may perform the duties imposed on a magistrate under this section
30 without the approval of the juvenile court if the juvenile board of the county in which the statement of the child is
31 made has authorized a referee or master to perform the duties of a magistrate under this section.

32 (f) A magistrate who provides the warnings required by subsection (a)(2)(5) for a videotaped statement may
33 at the time the warnings are provided require by speaking on the tape recording that the officer return the child and
34 the videotape to the magistrate at the conclusion of the process of questioning. At that time, the magistrate may
35 view the videotape with the child or have the child view the videotape to enable the magistrate to determine whether
36 any statement was given voluntarily. If the procedure authorized by this subsection is employed, the statement is not
37 admissible unless the magistrate determines it was given voluntarily.

38 **Comment**

39
40 Subsection (f) permits, but does not require, a magistrate who is giving juvenile warnings for a videotaped
41 interrogation to require the officer to return the child and videotape to the magistrate for a determination of

1 voluntariness. It is anticipated that magistrates will use this authority sparingly and only in cases where there may be
2 reason for concern about the child's capacity for making a voluntary statement.

3
4 **Family Code § 51.20. Physical or Mental Examination**

5 (c) At any stage of the proceedings under this title, the juvenile court may order a child who has been
6 referred to the juvenile court or who is alleged by a petition or found to have engaged in delinquent conduct or
7 conduct indicating a need for supervision to be subjected to a physical examination by a licensed physician.

8
9 **Comment**

10 When section 51.20 was amended in 2003 to conform to changes made in the Code of Criminal Procedure
11 dealing with competency to stand trial for adults, the legislature inadvertently repealed language that specifically
12 authorized the juvenile court to order physical examinations of children in the system. This amendment codifies the
13 inherent authority of juvenile courts to order physical examinations, which are necessary in admitting children to
14 programs, such as correctional boot camps, that require physical endurance.

15
16 **Family Code § 52.01 Taking Into Custody; Issuance Of Warning Notice**

17 (a) A child may be taken into custody:

18 (1) pursuant to an order of the juvenile court under the provisions of this subtitle;

19 (2) pursuant to the laws of arrest;

20 (3) by a law-enforcement officer, including a school district peace officer commissioned under Section
21 37.081, Education Code, if there is probable cause to believe that the child has engaged in:

22 (A) conduct that violates a penal law of this state or a penal ordinance of any political subdivision of this
23 state;

24 (B) delinquent conduct or conduct indicating a need for supervision; or

25 (C) conduct that violates a condition of probation imposed by the juvenile court;

26 (4) by a probation officer if there is probable cause to believe that the child has violated a condition of
27 probation imposed by the juvenile court; or

28 (5) pursuant to a directive to apprehend issued as provided by Section 52.015.

29 (6) by a probation officer if there is probable cause to believe that the child has violated a condition of
30 release imposed by the juvenile court or referee under §54.01.

31 (b) The taking of a child into custody is not an arrest except for the purpose of determining the validity of taking
32 him into custody or the validity of a search under the laws and constitution of this state or of the United States.

33 (c) A law-enforcement officer authorized to take a child into custody under Subdivisions (2) and (3) of Subsection
34 (a) of this section may issue a warning notice to the child in lieu of taking the child into custody if:

35 (1) guidelines for warning disposition have been issued by the law-enforcement agency in which the officer
36 works;

37 (2) the guidelines have been approved by the juvenile board of the county in which the disposition is made;

38 (3) the disposition is authorized by the guidelines;

39 (4) the warning notice identifies the child and describes the child's alleged conduct;

40 (5) a copy of the warning notice is sent to the child's parent, guardian, or custodian as soon as practicable
41 after disposition; and

1 (6) a copy of the warning notice is filed with the law-enforcement agency and the office or official
2 designated by the juvenile board.

3 (d) A warning notice filed with the office or official designated by the juvenile board may be used as the basis of
4 further action if necessary.

5
6 **Comment**

7 Where the associate judge or judge releases a juvenile upon certain conditions under § 54.01, then a
8 probation officer should be able to take the child into custody if there is probable cause to believe the child violated
9 the conditions of release, without having to first obtain a directive to apprehend. The intake officer then has an
10 opportunity to re-assess whether the child should be detained under the detain-or-release criteria, given the violation
11 of the conditions.

12 This is consistent with the probation officer's authority to take a child into custody with probable cause to
13 believe a probation condition had been violated. Requiring the officer to write an affidavit and deliver it to a court to
14 obtain a directive slows down the process, adds no protections for the child, and burdens a system already
15 overburdened with paperwork that detracts from field work.

16
17 **Family Code § 52.015. Bench Warrant; Attachment of Witness In Custody.**

18 (a) If a witness is in a placement in the custody of the Texas Youth Commission, a juvenile secure detention
19 facility, or a juvenile secure correctional facility, the court may issue a bench warrant or direct that an attachment
20 issue to require a peace officer or probation officer to secure custody of the person at the placement and produce
21 the person in court. Once the person is no longer needed as a witness, the court shall order the peace officer of
22 probation officer to return the person to the placement from which the person was released.

23 (b) The court shall order that the person who is the witness be detained in a certified juvenile detention facility. If
24 the person is at least 17 years of age, the court may order that the person be detained without bond in an
25 appropriate county facility for the detention of adults accused of criminal offenses.

26
27 **Comment**

28 This proposed change clarifies that juveniles who are in the custody of the Texas Youth Commission or
29 another secure juvenile correctional facility may be witnesses in criminal or civil proceedings upon the issuance of a
30 bench warrant or attachment. The amendment places the responsibility for transporting the witness to and from the
31 facility on law enforcement or probation officers instead of the facility wherein the youth resides. When a youth is
32 brought back to be a witness, the youth may be held in the county juvenile detention facility or if the youth is 17 or
33 older, in the county jail.

34
35 **Family Code § 53.03. Deferred Prosecution**

36 (k) In deciding whether to grant deferred prosecution under subsection (i), the juvenile court may consider
37 professional representations by the parties concerning the nature of the case and the background of the respondent.
38 No representations made for that purpose, nor any information derived from such representations, shall be admissible
39 against the respondent at trial should the court reject the application for deferred prosecution.

1 **Comment**

2 This subsection permits the juvenile court to learn about the offense and the respondent when asked to
3 grant deferred prosecution under the provision enacted in 2003. The information must be obtained and a decision
4 made before jeopardy attaches in the case. Any information obtained under this provision is inadmissible in a trial
5 should the court deny deferred prosecution.
6

7 **Family Code § 54.01. Detention Hearing**

8 (l) The juvenile board may appoint a referee to conduct the detention hearing. The referee shall be an
9 attorney licensed to practice law in this state. Such payment or additional payment as may be warranted for referee
10 services shall be provided from county funds. Before commencing the detention hearing, the referee shall inform the
11 parties who have appeared that they are entitled to appeal the referee's findings and recommendations to [have the
12 hearing before] the juvenile court judge or a substitute judge authorized by Section 51.04(f). ~~[If a party objects to the~~
13 ~~referee conducting the detention hearing, an authorized judge shall conduct the hearing within 24 hours.]~~ At the
14 conclusion of the hearing, the referee shall transmit written findings and recommendations to the juvenile court
15 judge or substitute judge. The juvenile court judge or substitute judge shall adopt, modify, or reject the referee's
16 recommendations not later than the next working day after the day that the judge receives the recommendations. A
17 party may appeal the decision of the referee to the juvenile court judge or substitute judge by filing written notice of
18 appeal with the clerk and providing a copy to counsel for the other party within four business hours after the
19 conclusion of the hearing. The notice shall specify the legal or factual errors the referee is alleged to have committed.
20 The juvenile court judge or substitute judge shall confer with the attorneys for the parties before the conclusion of
21 the next working day after notice of appeal was filed regarding the appeal. New evidence shall not be offered or
22 received. The referee and any attorney representing a party shall be entitled to participate in the conference. The
23 conference may be held by telephone in the discretion of the judge. After the appeal conference, the judge shall
24 promptly affirm, reverse or modify the findings and recommendations of the referee. Failure to act [within] by the
25 conclusion of the next working day after the day the judge receives the referee's recommendation or the next
26 working day after the day on which the notice of appeal is filed, whichever is later, [that time] results in release of the
27 child by operation of law. A recommendation that the child be released operates to secure the child's immediate
28 release, subject to the power of the juvenile court judge or substitute judge to reject or modify that
29 recommendation. The effect of an order detaining a child shall be computed from the time of the hearing before the
30 referee.
31

32 **Comment**

33 When the referee provisions were first enacted in Title 3 in 1973, they were among the first such provisions
34 to be enacted by the State of Texas. Uncertain as to the validity of referee provisions, the legislature gave the parties
35 the right to reject a referee in favor of an elected judge and the right to appeal the findings and recommendations of
36 the referee to the elected judge.

37 Since 1973, the legislature has enacted numerous referee, master, and associate judge provisions, but none
38 of them gives a party the right to reject the referee and insist upon the case being tried before the elected judge.
39 See Government Code Chapter 54. This amendment in Sections 51.04 and 54.01 modernize Title 3 referee provisions
40 to conform more closely with those that exist elsewhere in the statutes.
41
42

1 Instead of a right to reject the referee, a party has a right to an appeal conference with the juvenile court
2 judge to review the findings and recommendations of the referee. The details of that right are set out in this section
3 and Section 54.10.

4
5 **Family Code § 54.01. Detention Hearing**

6 (q) If a child has not been released under Section 53.02 or this section and a petition has not been filed under
7 Section 53.04 or 54.05 concerning the child, the court shall order the child released from detention not later than:

8 (1) the 30th working day after the date the initial detention hearing is held, if the child is alleged to have
9 engaged in conduct constituting a capital felony, an aggravated controlled substance felony, or a felony of the first
10 degree; or

11 (2) the 15th working day after the date the initial detention hearing is held, if the child is alleged to have
12 engaged in conduct constituting an offense other than an offense listed in Subdivision (1) or conduct that violates an
13 order of probation imposed by a juvenile court.

14 (q-1) The juvenile board may impose an earlier deadline than 30 or 15 working days for filing petitions under
15 subsection (q) and may specify the consequences of not filing a petition by the deadline it has established, and it may
16 authorize but not require the juvenile court to release a respondent from detention for failure of the prosecutor to
17 file a petition by the juvenile board's deadline.

18
19 **Comment**

20 New subsection (q-1) supplements the prompt filing provisions of subsection (q) by authorizing a local
21 juvenile board to impose shorter filing deadlines for such purposes as controlling the number of persons detained in
22 local facilities. While the board may as a matter of policy recommend deadlines, it cannot require the juvenile court
23 to release a child when the deadline has been violated. The court may do so, but cannot be required to do so.

24
25 **Family Code § 54.012. Interactive Video Recording of Detention Hearing**

26 (a) A detention hearing under Section 54.01~~[, other than the first detention hearing,]~~ may be held using
27 interactive video equipment if:

28 (1) the child and the child's attorney agree to the video hearing; and

29 (2) the parties to the proceeding have the opportunity to cross-examine witnesses.

30
31 **Comment**

32 In light of the protections required to authorize video recording of detention hearings under this section,
33 including waiver of the right to an in-person hearing by the child and his/her attorney, there is no reason not to
34 authorize video hearings for initial detention hearings as well as subsequent ones.

35
36 **Family Code § 54.04. Disposition Hearing.**

37 (e) Except as provided in Subsection (v), the [The] Texas Youth Commission shall accept a person properly
38 committed to it by a juvenile court even though the person may be 17 years of age or older at the time of
39 commitment.

40 (v) The Texas Youth Commission shall not accept a person committed to it by a juvenile court if the person is in
41 the third trimester of pregnancy at the time the person is presented for acceptance.

1 **Comment**

2 This new provision prohibits TYC from accepting girls committed to it by juvenile courts if they are in the third
3 trimester of pregnancy at the time they are brought to TYC's Marlin Orientation and Assessment Unit for acceptance.
4 Due to the girls' young age and often fragile health condition, these are high-risk pregnancies that can be further
5 complicated by the institutional environment. At this late stage of pregnancy, the girls' focus is understandably on
6 the pending birth and not on their rehabilitative treatment and assessment. After their babies are born, the girls will
7 be accepted at TYC.

8
9 **Family Code § 54.05. Hearing to Modify Disposition**

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

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

13 (A) it is in the child's best interests to be placed outside the child's home;

14 (B) reasonable efforts were made to prevent or eliminate the need for the child's
15 removal from the home and to make it possible for the child to return to the child's home; and

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

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

20
21 **Comment**

22 Currently these findings are required to be made by a judge in a disposition hearing under §54.04 prior to
23 removing a child from home. This amendment would require these same findings be made by a judge when
24 modifying a prior disposition to order the child's removal from home. Former Justice Schneider, of the Supreme
25 Court of Texas, made a recommendation that this change be made by the legislature in a concurring opinion joined
26 by Justices O'Neill and Jefferson. See *In the Matter of J.P.*, 136 S.W.3d 629 (Tex. 2004).

27 Additionally, the findings required by this amendment are required under federal law to be eligible for
28 reimbursement of residential placement expenses under the Title IV-E Foster Care program. This is an important
29 source of funding for counties (through the Texas Juvenile Probation Commission) and the Texas Youth Commission.
30 Inclusion of the findings may allow more reimbursements to be collected from the federal government.

31
32 **Family Code § 54.10. Hearings Before Referee**

33 (a) Except as provided by Subsection (e), a hearing under Section 54.03, 54.04, or 54.05, including a jury trial,
34 a hearing under Chapter 55, including a jury trial, or a hearing under Article IV, Article V, and Article VI of the Uniform
35 Interstate Compact on Juveniles (Chapter 60) may be held by a referee appointed in accordance with Section 51.04(g)
36 or a master appointed under Chapter 54, Government Code, provided[-

37 ~~(1) the parties have been informed by the referee or master that they are entitled to appeal the~~
38 ~~findings and recommendations to [have the hearing before] the juvenile court judge[- and~~

39 ~~(2) after each party is given an opportunity to object, no party objects to holding the hearing before~~
40 ~~the referee or master}.~~

41 (b) The determination under Section 53.02(f) whether to release a child may be made by a referee appointed
42 in accordance with Section 51.04(g) if[-

1 **Family Code § 58.003 Sealing of Records**

2 (o) An agency or official named in the order that cannot seal the records because there is incorrect or insufficient
3 information in the order as required by subsection (p), shall notify the court issuing the order before the 61st day after
4 the date the agency or official receives the order. The court shall notify the person who made the application or who
5 is the subject of the records named in the motion, or the attorney for that person, before the 61st day after the date
6 the court receives the notice that the agency or official cannot seal the records because there is incorrect or
7 insufficient information in the order.

8 (p) A person who is eligible to seal records may file an application for sealing in a juvenile court of the county in
9 which the proceedings occurred. The application and sealing order entered upon it must include the following or an
10 explanation for why one or more of the following is not included:

11 (1) the applicant's

12 (a) full name;

13 (b) gender;

14 (c) race or ethnicity;

15 (d) date of birth

16 (e) driver's license or identification card number;

17 (f) social security number;

18 (2) the offense charged against the applicant or for which the applicant was referred to the juvenile justice
19 system;

20 (3) the date upon which and the county within which the offense was alleged to have been committed; and

21 (4) if a petition was filed in the juvenile court, the cause number assigned to it and the court and county in
22 which it was filed.

23
24 **Comment**

25 These amendments are proposed at the suggestion of DPS. It needs the information required by subsection
26 (p) properly to identify the records to be sealed. These requirements are derived from those in adult expunction
27 cases under Chapter 55 of the Code of Criminal Procedure.

28
29 **Family Code § 58.003. Sealing of Records**

30 (a) Except as provided by Subsections (b) and (c), on the application of a person who has been found to have
31 engaged in delinquent conduct or conduct indicating a need for supervision, or a person taken into custody to
32 determine whether the person engaged in delinquent conduct or conduct indicating a need for supervision, on the
33 juvenile court's own motion [~~or on receipt of a certification from the Department of Public Safety of the State of~~
34 ~~Texas that the records of a person are eligible for sealing under this section,~~] the court shall order the sealing of the
35 records in the case if the court finds that:

36 (1) two years have elapsed since final discharge of the person or since the last official action in the
37 person's case if there was no adjudication; and

38 (2) since the time specified in Subdivision (1), the person has not been convicted of a felony or a
39 misdemeanor involving moral turpitude or found to have engaged in delinquent conduct or conduct indicating a
40 need for supervision and no proceeding is pending seeking conviction or adjudication.

1 **Comment**

2 In view of the added burdens on DPS on administering the restricted access system, and the correspondingly
3 less importance of sealing of records, DPS should be relieved of the burden of certifying that records are eligible for
4 sealing. Records can still be sealed by petition of the respondent or self-initiated action by the juvenile court.

5
6 **Family Code § 58.003. Sealing of Records.**

7 (g) On entry of the order:

8 (1) all law enforcement, prosecuting attorney, clerk of court, and juvenile court records ordered sealed
9 shall be sent before the 61st day after the date the order is received to the court issuing the order;

10
11 (2) all records of a public or private agency or institution ordered sealed shall be sent before the 61st day
12 after the date the order is received to the court issuing the order. Any records collected or maintained by the Texas
13 Juvenile Probation Commission, including statistical data submitted under Section 141.044(e), Human Resources
14 Code, shall not be subject to a sealing order issued under this Section.

15 (3) all index references to the records ordered sealed shall be deleted before the 61st day after the date the order is
16 received, and verification of the deletion shall be sent before the
17 61st day after the date of the deletion to the court issuing the order;

18
19 **Comment**

20 This section allows the Texas Juvenile Probation Commission (TJPC) to maintain all juvenile justice records for
21 statistical purposes. Currently there is no provision to allow for sealed records to be retained for statistical purposes,
22 thus impacting historical trends and information.

23
24 **Family Code § 58.0072. Dissemination Of Juvenile Justice Information.**

25 (a) Juvenile justice information collected and maintained by the Texas Juvenile Probation Commission for
26 statistical and research purposes is confidential information for the use of the Commission and, except as provided by
27 this Section, may not be disseminated by the Commission.

28 (b) Juvenile justice information shall consist of information of the type described in Section 58.104, Family Code,
29 including statistical data in any form or medium collected, maintained, and/or submitted to the Commission under
30 Section 141.044(e), Human Resources Code.

31 (c) The Commission may grant access to juvenile justice information to:

32 (1) criminal justice agencies as defined in Section 411.082, Government Code;

33 (2) the Texas Education Agency or any agency under the authority of the Health and Human Services
34 Commission;

35 (3) a public or private university;

36 (4) a person working on a research or statistical project that:

37 (A) is funded in whole or in part by state funds; or

38 (B) meets the requirements of Part 22, Title 28, Code of Federal Regulations, and is approved by the
39 Commission;

40 (5) a governmental entity that has a specific agreement with the Commission, if the agreement:

41 (A) specifically authorizes access to information;

42 (B) limits the use of information to the purposes for which it is given;

1 (C) ensures the security and confidentiality of the information: and

2 (D) provides for sanctions if a requirement imposed under Paragraph (A), (B), or (C) is violated:

3 (d) The Commission shall grant access to juvenile justice information for legislative purposes under Sec. 552.008,
4 Government Code.

5 (e) The Commission may disseminate juvenile justice information under Subsections (c)(1), (c)(2) or (c)(3) for
6 research and statistical purposes. The Commission may disseminate juvenile justice information under Subsection
7 (c)(4) or (c)(5) only for a purpose approved by the Commission.

8 (f) The Commission shall not release juvenile justice information in identifiable form, except as provided under
9 Subsections (c)(1) and (c)(2) or pursuant the terms of any agreement authorized herein. Identifiable information
10 means information that contains a juvenile offender's name or other personal identifiers or can, by virtue of sample
11 size or other factors, be reasonably interpreted as referring to a particular juvenile offender.

12 (g) The Commission is not required to release or disclose juvenile justice information to any person that is not
13 listed in this Section.

14 **Comment**

15
16 This new subchapter provides for the dissemination of juvenile justice information between the Texas
17 Juvenile Probation Commission (TJPC) and specified public and private entities. The purpose of this provision is to
18 clarify with whom TJPC is able to share juvenile justice information and for what purposes. The subchapter also allows
19 for the release of identified data under certain limited circumstances.

20 **Family Code § 58.104. Types of Information Collected**

21
22 (f) Records maintained by the department in the depository are subject to being sealed under Section 58.003.
23 ~~The department shall send to the appropriate juvenile court its certification of records that the department~~
24 ~~determines, according to the department's records, are eligible for sealing under Section 58.003(a).~~

25 **Comment**

26
27 This amendment removes the requirement that DPS notify local juvenile courts when it certifies a juvenile record
28 is eligible for sealing according to the department's records.

29 **Family Code § 58.106. Confidentiality**

30
31 (a) Except as otherwise provided by this section, information contained in the juvenile justice information system
32 is confidential information for the use of the department and may not be disseminated by the department except:

33 (1) with the permission of the juvenile offender, to military personnel of this state or the United States;

34 (2) to a person or entity to which the department may grant access to adult criminal history records as
35 provided by Section 411.083, Government Code, other than to a non-criminal justice agency described in Section
36 411.083 (b)(2), unless the information relates to a juvenile offender who has been committed to the Texas Youth
37 Commission under a determinate sentence under Section 54.04(d)(3), Section 54.04(m), or Section 54.05(f);

38 (3) to a juvenile justice agency; and

39 (4) to the Criminal Justice Policy Council, the Texas Youth Commission, and the Texas Juvenile Probation
40 Commission for analytical purposes.

1 **Comment**

2 Sec. 58.106(a)(2), Family Code, authorizes the Department of Public Safety (DPS) to grant access to
3 information contained in its juvenile justice information system as provided by Sec. 411.083, Government Code. That
4 section of the Government Code includes a provision in subsection (b)(2) that requires DPS to grant access to this
5 juvenile information to noncriminal justice agencies that are authorized to receive criminal history record information.
6 Under this amendment, these noncriminal justice agencies could receive from DPS only juvenile justice information
7 that pertains to determinate sentence youth.

8 The purpose of laws that protect the confidentiality of juvenile justice information is to help ensure that
9 misconduct persons engage in as children does not impede their becoming successful, law-abiding adults. By
10 avoiding further criminal conduct, they can expect that their delinquent past will not be held against them,
11 particularly with regard to their employment opportunities. Access to juvenile justice information by noncriminal
12 justice agencies, particularly those that are professional licensing agencies, could defeat this purpose by their using
13 this information about a person's delinquent past in a way that impedes his or her future employment opportunities.
14 Statistics demonstrate that employment is a major factor in determining whether these persons will engage in future
15 crime.

16 Since most youth who are sentenced to commitment to TYC are transferred ultimately to the Texas
17 Department of Criminal Justice for completion of their sentence terms, either in prison or on adult parole, their
18 delinquent history will become a part of their adult record in any event. In their case, access to juvenile justice
19 information by noncriminal justice agencies would not have any additional detrimental impact.

20
21 **Family Code § 58.203. Certification**

22 (a) The department shall certify to [the juvenile court or] the juvenile probation department to which a
23 referral was made that resulted in information being submitted to the juvenile justice information system that the
24 records relating to a person's juvenile case are subject to automatic restriction of access if:

25 (1) the person is at least 21 years of age;

26 (2) the juvenile case did not include violent or habitual felony conduct resulting in proceedings in the
27 juvenile court under Section 53.045;

28 (3) the juvenile case was not certified for trial in criminal court under Section 54.02; and

29 (4) the department has not received a report in its criminal history system that the person was granted
30 deferred adjudication for or convicted of a felony or a misdemeanor punishable by confinement in jail for an offense
31 committed after the person became 17 years of age.

32 (b) If the department's records relate to a juvenile court with multi-county jurisdiction, the department shall
33 certify as required by subsection (a) to each juvenile probation department that serves that court. Upon receipt of
34 such a certification, each juvenile probation department shall determine whether the referral was made to it and, in
35 that event only, take the restrictive action notification required by law.

36 (c) The certification required by subsection (a) shall be by electronic means, such as by e-mail.

37
38 **Comment**

39 These amendments are intended to simplify the job of DPS in providing restricted access notices to the field.
40 Subsection (a) requires that the notices are to go directly to the probation department, rather than to the juvenile
41 court. That will promote efficiency, since the probation department is actually responsible for providing further
42 notice to local agencies.

1 In the event the department's records relate to a juvenile court with multi-county jurisdiction, the
2 certification is to go to each juvenile probation department that serves that court. It is up to the department to sort
3 out whether it handled the case or another department did.

4 Subsection (c) provides that the certification will be by e-mail, rather than by postal service delivery of hard
5 copy.

6
7 **Family Code § 58.207. Juvenile Court Orders on Certification**

8 (a) On certification of records in a case under Section 58.203, the juvenile court shall order:

9 (1) that the following records relating to the case may be accessed only as provided by Section
10 58.204(b):

11 (A) if the respondent was committed to the Texas Youth Commission, records maintained by the
12 commission;

13 (B) records maintained by the juvenile probation department ~~[-and by any agency that provided care
14 or custody of the child under order or arrangement of the juvenile court];~~

15 (C) records maintained by the clerk of the court;

16 (D) records maintained by the prosecutor's office; and

17 (E) records maintained by a law enforcement agency; and

18 (2) the juvenile probation department to ~~make a reasonable effort to~~ notify the person who is the
19 subject of records for which access has been restricted of the action restricting access and the legal significance of
20 the action for the person, but only if the person has requested such notification in writing and has provided a current
21 address.

22 (b) On receipt of an order under Subsection (a)(1), the agency maintaining the records:

23 (1) may allow access only as provided by Section 58.204(b); and

24 (2) shall respond to a request for information about the records by stating that the records do not exist.

25
26 **Comment**

27 The requirement that probation notify all agencies that provided care or custody of the child has proved to
28 be burdensome and unnecessary, so it has been eliminated. All records maintained by such agencies are made
29 confidential anyway by Section 58.005.

30 The second amendment reduces the burden on local probation departments to provide notification of
31 restricted access to those cases in which the juvenile or his family have requested notification and provided an
32 address to which it should be sent. This is similar to the notification required under the victims' rights provisions of
33 Chapter 57. See § 57.004.

34
35 **Family Code § 58.208. Information to Child on Discharge**

36 On the final discharge of a child from the juvenile system or on the last official action in the case, if there is
37 no adjudication, the appropriate juvenile justice official shall provide to the child:

38 (1) a written explanation of how automatic restricted access under this subchapter works; ~~[-and]~~

39 (2) a copy of this subchapter, and

40 (3) a statement that if the child wishes to be notified of the child's records being placed on restricted access
41 at age 21, the child must sometime before that age is reached provide the juvenile probation department with a
42 current address where the child can be notified.

1 **Comment**

2 This amendment implements the policy of Section 58.207(a)(2) which, as amended, requires the probation
3 department to notify the subject of restricted access only if it has been provided with an address for the subject.
4

5 **Family Code § 58.211. Rescinding Restricted Access**

6 (a) If after the department has notified a juvenile probation department that a record has been placed on
7 restricted access, it receives information in its criminal history system that the subject of those records has been
8 convicted of or placed on deferred adjudication for a felony or a misdemeanor punishable by confinement in jail for
9 an offense committed after the person became 17, the record shall no longer enjoy restricted access status.

10 (b) The department shall notify the appropriate local juvenile probation departments in the manner required
11 by Section 58.203 that the records are no longer restricted.

12 (b) Upon receipt of notice of rescinding of restricted access, the juvenile probation department shall notify
13 agencies as required by Section 58.207 of the rescinding of restricted access.
14

15 **Comment**

16 This new section requires DPS to notify local departments that records that were previously placed on
17 restricted access are no longer restricted because the subject has been convicted or received deferred adjudication
18 for an offense that would have initially disqualified the person from restricted access. Local probation departments
19 are required to notify the agencies they previously notified of restricted access to tell them that access is no longer
20 restricted.
21

22 **Family Code § 58.301. Definitions**

23 (5) "Partner agency" means a governmental service provider or governmental placement facility that is
24 ~~required~~ authorized by this subchapter to be a member of a local juvenile justice information system or that has
25 applied to be a member of a local juvenile justice information system and has been approved by the county juvenile
26 board or regional juvenile board committee as a member of the system.
27

28 **Comment**

29 Bexar County is in the process of establishing a local juvenile justice information system and they are adding
30 partners periodically. In trying to utilize subchapter 58 to establish their local JJIS, the county has identified some
31 mandatory terms that make the existing statutory scheme un-usable by their jurisdiction. Certain partners and
32 information that Bexar County does not presently have are required by the statute. Bexar County would like the
33 flexibility to use subchapter 58 as the statutory framework to build their local JJIS and add partners periodically as
34 feasible. Accordingly, Bexar County requests that the "shall's" be amended to "may's" in the statute.
35

36 **Family Code § 58.303. Local Juvenile Justice Information System**

37 (a) Juvenile justice agencies in a county or region of this state may jointly create and maintain a local juvenile
38 justice information system to aid in processing the cases of children under this code, to facilitate the delivery of
39 services to children in the juvenile justice system, and to aid in the early identification of at-risk and delinquent
40 children.

41 (b) A local juvenile justice information system ~~must~~ may contain the following components:

1 (1) case management resources for juvenile courts, prosecuting attorneys, and county juvenile probation
2 departments;

3 (2) reporting systems to fulfill statutory requirements for reporting in the juvenile justice system;

4 (3) service provider directories and indexes of agencies providing services to children; and

5 (4) victim-witness notices required under Chapter 57.

6 ~~(c) A local juvenile justice information system may contain the following components:~~

7 ~~(45)~~ (5) electronic filing of complaints or petitions;

8 (6) electronic offense and intake processing;

9 (7) case docket management and calendaring;

10 (8) communications by email or other electronic communications between partner agencies;

11 (9) reporting of charges filed, adjudications and dispositions of juveniles by municipal and justice courts and
12 the juvenile court, and transfers of cases to the juvenile court as authorized or required by Section 51.08;

13 (10) reporting to schools under Article 15.27, Code of Criminal Procedure, by law enforcement agencies,
14 prosecuting attorneys, and juvenile courts;

15 (11) records of adjudications and dispositions, including probation conditions ordered by the juvenile court;
16 and

17 (12) warrant management and confirmation capabilities.

18 (d) Membership in a local juvenile justice information system is determined by this subchapter. Membership in a
19 regional juvenile justice information system is determined by the regional juvenile board committee from among
20 partner agencies that have applied for membership.

21 22 **Comment**

23 Bexar County is in the process of establishing a local juvenile justice information system and they are adding
24 partners periodically. In trying to utilize subchapter 58 to establish their local JJIS, the county has identified some
25 mandatory terms that make the existing statutory scheme un-usable by their jurisdiction. Certain partners and
26 information that Bexar County does not presently have are required by the statute. Bexar County would like the
27 flexibility to use subchapter 58 as the statutory framework to build their Local JJIS and add partners periodically as
28 feasible. Accordingly, Bexar County requests that the "shall's" be amended to "may's" in the statute.
29

30 **Family Code § 58.305. Partner Agencies**

31 (a) A local juvenile justice information system shall to the extent possible, include the following partner agencies
32 within that county:

33 (1) the juvenile court;

34 (2) justice of the peace and municipal courts;

35 (3) the county juvenile probation department;

36 (4) the prosecuting attorneys who prosecute juvenile cases in juvenile court, municipal court, or justice
37 court;

38 (5) law enforcement agencies;

39 (6) each public school district in the county;

40 (7) governmental service providers approved by the county juvenile board; and

41 (8) governmental placement facilities approved by the county juvenile board.

1 (b) A local juvenile justice information system for a multicounty region shall to the extent possible include the
2 partner agencies listed in Subsections (a)(1)-(6) for each county in the region and the following partner agencies from
3 within the multicounty region that have applied for membership in the system and have been approved by the
4 regional juvenile board committee:

- 5 (1) governmental service providers; and
6 (2) governmental placement facilities.
7

8 **Comment**

9 Bexar County is in the process of establishing a local juvenile justice information system and they are adding
10 partners periodically. In trying to utilize subchapter 58 to establish their local JJIS, the county has identified some
11 mandatory terms that make the existing statutory scheme un-usable by their jurisdiction. Certain partners and
12 information that Bexar County does not presently have are required by the statute. Bexar County would like the
13 flexibility to use subchapter 58 as the statutory framework to build their Local JJIS and add partners periodically as
14 feasible. Accordingly, Bexar County requests that the "shall's" be amended to "may's" in the statute.
15

16 **Family Code § 61.0031. Transfer of Order Affecting Parent or Other Eligible Person to County of Child's** 17 **Residence**

18 (a) This section applies when

19 (1) a juvenile court has placed a parent or other eligible person under a court order under this chapter:

20 (2) the child who was the subject of the juvenile court proceedings in which the order was entered

21 (A) resides in another county,

22 (B) has moved to another county intending to remain for more than 60 days, or

23 (C) intends to move to another county and to remain there for more than 60 days; and

24 (3) the parent or other eligible person resides or will reside in the same county as the county in which
25 the child now resides, has moved or intends to move.

26 (b) When this section applies, the juvenile court that entered the order may transfer the order to the
27 juvenile court of the county in which the parent now resides, has moved or intends to move.

28 (c) The juvenile court shall give the parent or other eligible person written notice of the transfer, identifying
29 the court to which the order has been transferred.

30 (d) The juvenile court to which the order has been transferred must cause the parent or other eligible
31 person to be brought before it to notify the person of the existence and terms of the order. Failure to do so makes
32 the order unenforceable.

33 (e) If the notice required by subsection (d) is provided, the juvenile court may modify, extend, or enforce
34 the order as though it has originally entered it.
35

36 **Comment**

37 When a child has moved to a different county and interim or permanent supervision has been established in
38 the new county of residence, this section authorizes, but does not require, the juvenile court that entered an order
39 against a parent or other eligible person to transfer the court order to the new county if the parent or other eligible
40 person will reside in the same county as the child.
41
42

1 **Family Code § 261.101. Persons Required to Report; Time to Report.**

2 (a) A person having cause to believe that a child's physical or mental health or welfare has been adversely
3 affected by abuse or neglect by any person shall immediately make a report as provided by this subchapter.

4 (b) If a professional has cause to believe that a child has been abused or neglected or may be abused or
5 neglected, or that a child is a victim of an offense under Section 21.11, Penal Code, and the professional has cause to
6 believe that the child has been abused as defined by Section 261.001 or Section 261.401, the professional shall make
7 a report not later than the 48th hour after the hour the professional first suspects that the child has been or may be
8 abused or neglected or is a victim of an offense under Section 21.11, Penal Code. A professional may not delegate to
9 or rely on another person to make the report. In this subsection, "professional" means an individual who is licensed or
10 certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the
11 normal course of official duties or duties for which a license or certification is required, has direct contact with
12 children. The term includes teachers, nurses, doctors, day-care employees, employees of a clinic or health care facility
13 that provides reproductive services, juvenile probation officers, and juvenile detention or correctional officers.

14
15 **Comment**

16 The statutorily mandated reporting of abuse, neglect and exploitation references the definitions of these
17 terms in Section 261.001. However, there are additional definitions of abuse, neglect and exploitation contained in
18 Section 261.401 related to certain facilities. This recommended change adds the definitions of abuse, neglect and
19 exploitation in juvenile justice facilities to the mandatory reporting requirement.

20
21 **Family Code § 261.405. Investigations in Juvenile Justice Programs and Facilities.**

22 (e) As soon as possible after a child is taken into custody or placed in a juvenile justice facility or juvenile
23 justice program, the child's parents shall be provided information regarding the reporting of suspected abuse, neglect
24 or exploitation of children to the Texas Juvenile Probation Commission and shall be provided the Commission's toll-
25 free number for such reporting.

26
27 **Comment**

28 The addition requires that information be provided to the parents of a child taken into custody or placed into
29 a juvenile justice facility or program be given information on reporting suspected abuse, neglect or exploitation of a
30 child to the Texas Juvenile Probation Commission.

31
32 **Penal Code**

33 **Penal Code § 8.07. Age Affecting Criminal Responsibility**

34 (a) A person may not be prosecuted for or convicted of any offense that the person committed when younger
35 than 15 years of age except:

36 (1) perjury and aggravated perjury when it appears by proof that the person had sufficient discretion to
37 understand the nature and obligation of an oath;

38 (2) a violation of a penal statute cognizable under Chapter 729, Transportation Code, except for conduct for
39 which the person convicted may be sentenced to imprisonment or confinement in jail[-

40 ~~(A) an offense under Section 521.457, Transportation Code;~~

41 ~~(B) an offense under Section 550.021, Transportation Code;~~

1 ~~(C) an offense punishable as a Class B misdemeanor under Section 550.022, Transportation Code;~~
2 ~~(D) an offense punishable as a Class B misdemeanor under Section 550.024, Transportation Code; or~~
3 ~~(E) an offense punishable as a Class B misdemeanor under Section 550.025, Transportation Code;~~
4

5 **Comment**

6 This section and the previous section redefine traffic offense by excluding from its definition any offense that
7 would be a traffic offense except it carries a punishment of incarceration. That is the principle the legislature has
8 enacted over the past three sessions on an offense by offense basis. This amendment enacts the principle itself, thus
9 eliminating the need each session to remove another offense from the traffic offense category. An example is the
10 offense of contesting speed which was made a B misdemeanor by the last legislature. Had this amendment been in
11 place at the time, it would have automatically removed it from the traffic offense category and made it delinquent
12 conduct.
13

14 **Penal Code § 22.04. Injury to a Child, Elderly Individual, or Disabled Individual**

15 (k)(1) It is a defense to prosecution under this section that the act or omission consisted of:

16 (A) reasonable medical care occurring under the direction of or by a licensed physician; or

17 (B) emergency medical care administered in good faith and with reasonable care by a person not
18 licensed in the healing arts.

19 (2) It is an affirmative defense to prosecution under this section that the act or omission was based on
20 treatment in accordance with the tenets and practices of a recognized religious method of healing with a generally
21 accepted record of efficacy. It is an affirmative defense to prosecution for a person charged with an act of omission
22 under this section causing to a child, elderly individual, or disabled individual a condition described by Subsection
23 (a)(1), (2), or (3) that:

24 (A) there is no evidence that, on the date prior to the offense charged, the defendant was aware of
25 an incident of injury to the child, elderly individual, or disabled individual and failed to report the incident; and

26 (B) the person:

27 (i) was a victim of family violence, as that term is defined by Section 71.004, Family Code,
28 committed by a person who is also charged with an offense against the child, elderly individual, or disabled individual
29 under this section or any other section of this title;

30 (ii) did not cause a condition described by Subsection (a)(1), (2), or (3); and

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2) It is an affirmative defen16.2(sc)3.or7ets

1 exclude it from the increased penalty ranges under the injury to a child statute. In these cases, the assault and
2 aggravated assault statutes could be charged in cases where bodily injury or serious bodily injury is caused to a child.
3 This situation often arises in the case of fights between youths and the serious felony penalties (State Jail Felony to 1st
4 Degree) of the injury to a child statute are not appropriate.

5

6 **Penal Code § 28.03. Criminal Mischief**

7 (a) A person commits an offense if, without the effective consent of the owner:

8 (1) he intentionally or knowingly damages or destroys the tangible property of the owner;

9 (2) he intentionally or knowingly tampers with the tangible property of the owner and causes pecuniary loss
10 or substantial inconvenience to the owner or a third person; or

11 (3) he intentionally or knowingly makes markings, including inscriptions, slogans, drawings, or paintings, on
12 the tangible property of the owner.

13 (b) Except as provided by Subsections (f) and (h), an offense under this section is:

14 (1) a Class C misdemeanor if:

15 (A) the amount of pecuniary loss is less than \$50; or

16 (B) except as provided in Subdivision (3)(A) or (3)(B), it causes substantial inconvenience to others;

17 (2) a Class B misdemeanor if the amount of pecuniary loss is \$50 or more but less than \$500;

18 (3) a Class A misdemeanor if:

19 (A) the amount of pecuniary loss is:

20 (i) \$500 or more but less than \$1,500; or

21 (ii) less than \$1,500 and the actor causes in whole or in part impairment or interruption of public

22 communications, public transportation, public gas or power supply, or other public service, or causes to be diverted in
23 whole, in part, or in any manner, including installation or removal of any device for any such purpose, any public
24 communications or public gas or power supply; or

25 (B) the actor causes in whole or in part impairment or interruption of any public water supply, or causes
26 to be diverted in whole, in part, or in any manner, including installation or removal of any device for any such
27 purpose, any public water supply, regardless of the amount of the pecuniary loss;

28 (4) a state jail felony if the amount of pecuniary loss is:

29 (A) \$1,500 or more but less than \$20,000;

30 (B) less than \$1,500, if the property damaged or destroyed is a habitation and if the damage or
31 destruction is caused by a firearm or explosive weapon; or

32 (C) less than \$1,500, if the property was a fence used for the production or containment of:

33 (i) cattle, bison, horses, sheep, swine, goats, exotic livestock, or exotic poultry; ~~or~~

34 (ii) game animals as that term is defined by Section 63.001, Parks and Wildlife Code; or

35 (D) less than \$1,500, if the suspect is confined in a secure detention or correctional facility as defined by
36 Section 51.02, Family Code, and the property damaged or destroyed is a safety fixture of the facility, such as a fire
37 safety sprinkler head;

38 (5) a felony of the third degree if the amount of the pecuniary loss is \$20,000 or more but less than
39 \$100,000;

40 (6) a felony of the second degree if the amount of pecuniary loss is \$100,000 or more but less than
41 \$200,000; or

42 (7) a felony of the first degree if the amount of pecuniary loss is \$200,000 or more.

1 **Comment**

2 This amendment makes it automatically a state jail felony when a child confined in a secure detention or
3 correctional facility damages or destroys a safety fixture of the facility, such as a sprinkler head. The danger and
4 inconvenience of such conduct makes it more serious than merely the pecuniary loss to the facility itself. Making the
5 offense a state jail felony would enable it to be prosecuted as delinquent conduct subject to TYC commitment.
6

7 **Penal Code § 38.114**

8 Sec. 38.114. Prohibited Substances & Items in Juvenile Correctional and Detention Facilities or on Texas Youth
9 Commission Property.

10 (a) A person commits an offense if the person provides:

11 (1) an alcoholic beverage, controlled substance, or dangerous drug to a person in the custody of a secure
12 correctional facility or secure detention facility for juveniles, except on prescription of a physician or practitioner, as
13 defined in Section 551.003, Occupations Code;

14 (2) a deadly weapon to a person in the custody of a secure correctional facility or secure detention facility
15 for juveniles; or

16 (3) a cellular telephone, cigarette, tobacco product, or money to a person in the custody of a secure
17 correctional facility or secure detention facility for juveniles, except for money that is provided for the benefit of the
18 juvenile in accordance with facility rules.

19 (b) A person commits an offense if the person takes an alcoholic beverage, controlled substance, or dangerous
20 drug into a secure correctional facility or secure detention facility for juveniles, except for delivery to a facility
21 warehouse, pharmacy, or physician.

22 (c) A person commits an offense if the person takes a controlled substance or dangerous drug on property
23 owned, used, or controlled by the Texas Youth Commission or by a secure correctional facility or secure detention
24 facility for juveniles, except for delivery to a warehouse, pharmacy, or physician on property owned, used, or
25 controlled by the commission or the facility.

26 (d) A person commits an offense if the person:

27 (1) possesses a controlled substance or dangerous drug while:

28 (A) on property owned, used, or controlled by the Texas Youth Commission or by a secure correctional
29 facility or secure detention facility for juveniles; or

30 (B) in a secure correctional facility or secure detention facility for juveniles; or

31 (2) possesses a deadly weapon while in a secure correctional facility or secure detention facility for juveniles.

32 (e) It is an affirmative defense to prosecution under Subsection (d)(1) of this section that the person possessed
33 the controlled substance or dangerous drug pursuant to a prescription issued by a practitioner or while delivering the
34 substance or drug to a warehouse, pharmacy, or physician on property owned, used or controlled by the Texas Youth
35 Commission or by the operator of the secure correctional facility or secure detention facility. It is an affirmative
36 defense to prosecution under Subsection (d)(2) of this section that the person possessing the deadly weapon is a
37 peace officer.

38 (f) In this section:

39 (1) "Secure correctional facility" and "secure detention facility" have the meaning assigned by Section 51.02,
40 Family Code.

41 (2) "Practitioner" has the meaning assigned by Section 481.002, Health and Safety Code.

1 (3) "Prescription" has the meaning assigned by Section 481.002, Health and Safety Code.

2 (4) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

3 (5) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

4 (g) An offense under this section is a felony of the third degree.

5 (h) Notwithstanding Section 15.01(d), if a person commits the offense of criminal attempt to commit an offense
6 under Subsection (a) or (b), the offense committed under Section 15.01 is a felony of the third degree.

7 (i) It is an affirmative defense to prosecution under Subsection (b) that the actor:

8 (1) is a duly authorized member of the clergy with rights and privileges granted by an ordaining authority
9 that includes administration of a religious ritual or ceremony requiring the presence or consumption of an alcoholic
10 beverage; and

11 (2) takes four ounces or less of an alcoholic beverage into the correctional or detention facility and
12 personally consumes all of the alcoholic beverage or departs from the facility with any portion of the beverage not
13 consumed.

14 **Comment**

15
16 This amendment adds a new Penal Code Section 38.114 that tracks the language of Section 38.11, Penal Code,
17 relating to prohibited substances and items in adult correctional facilities and on property of the Texas Department of
18 Criminal Justice. The new provision would make the same conduct an offense in any secure juvenile correctional or
19 detention facility. The new section makes it a felony of the third degree to:

- 20 a. provide or attempt to provide an alcoholic beverage, controlled substance, dangerous drug, deadly weapon,
21 cellular phone, cigarette, tobacco product or money (except in accordance with facility rules) to a youth in a
22 secure juvenile correctional or detention facility;
- 23 b. take or attempt to take an alcoholic beverage, controlled substance, or dangerous drug into a secure juvenile
24 correctional or detention facility (except for delivery to a warehouse, pharmacy, or physician and except for
25 alcoholic beverage use by clergy in religious ceremonies);
- 26 c. take a controlled substance or dangerous drug on property owned, used, or controlled by TYC or by any secure
27 juvenile correctional or detention facility (except for delivery to a warehouse, pharmacy, or physician); and
- 28 d. possess a controlled substance or dangerous drug on property owned, used, or controlled by TYC or by any
29 secure juvenile correctional or detention facility or in any secure juvenile correctional or detention facility (except
30 possession of a personal prescription or possession for delivery to a warehouse, pharmacy, or physician) or
31 possess a deadly weapon in a secure juvenile correctional or detention facility (except by peace officers).

32 **Code of Criminal Procedure**

33 **Code of Criminal Procedure Article 15.27. Notification to Schools Required**

34
35 (i) When an oral notification is required by this article, an electronic notification may be used instead. If an
36 electronic notification is used, any written notification required by this article is not also required.
37

38 **Comment**

39
40 This new subsection authorizes electronic notification to schools instead of oral notice followed by written
41 notification in those counties with an integrated local juvenile justice information system.

1 **Code of Criminal Procedure Article 24.011. Subpoenas; child witnesses**

2 (a) If a witness is younger than 18 years, the court may issue a subpoena directing a person having custody, care,
3 or control of the child to produce the child in court.

4 (b) If a person, without legal cause, fails to produce the child in court as directed by a subpoena issued under this
5 article, the court may impose on the person penalties for contempt provided by this chapter. The court may also
6 issue a writ of attachment for the person and the child, in the same manner as other writs of attachment are issued
7 under this chapter.

8 (c) If the witness is in a placement in the custody of the Texas Youth Commission, a juvenile secure detention
9 facility, or a juvenile secure correctional facility, the court may issue a bench warrant or direct that an attachment
10 issue to require a peace officer or probation officer to secure custody of the person at the placement and produce
11 the person in court. Once the person is no longer needed as a witness, the court shall order the peace officer of
12 probation officer to return the person to the placement from which the person was released.

13 (d) The court shall order that the person who is the witness be detained in a certified juvenile detention facility. If
14 the person is at least 17 years of age, the court may order that the person be detained without bond in an
15 appropriate county facility for the detention of adults accused of criminal offenses.

16 (e) In this Article, "secure detention facility" and "secure correctional facility" have the meanings assigned in
17 Section 51.02, Family Code.

18
19 **Comment**

20 This proposed change clarifies that juveniles who are in the custody of the Texas Youth Commission or
21 another secure juvenile correctional facility may be witnesses in criminal or civil proceedings upon the issuance of a
22 subpoena or bench warrant. The amendment places the responsibility for transporting the witness to and from the
23 facility on law enforcement or probation officers instead of the facility wherein the youth resides. When a youth is
24 brought back to be a witness, the youth may be held in the county juvenile detention facility or if the youth is 17 or
25 older, in the county jail.

26
27 **Code of Criminal Procedure Article 45.0215. Plea by Minor and Appearance of Parent**

28 (d) A justice or municipal court shall endorse on the summons issued to a parent an order to appear personally at
29 a hearing with the child. The summons must include a warning that the failure of the parent to appear may result in
30 arrest and is a Class C misdemeanor.

31
32 **Comment**

33 This amendment is non-substantive and merely mirrors a similar and related law contained in Article
34 45.057(e). Chapter 45 is clarified by having similar language in both articles.

35
36 **Code of Criminal Procedure Article 45.056. Authority to Employ Juvenile Case Managers; Reimbursement**

37 (a) On approval of the commissioners court, city council, school district board of trustees, juvenile board, or other
38 appropriate authority, a county court, a justice court, municipal court, school district, juvenile probation department,
39 or other appropriate governmental entity may:

40 (1) employ a case manager to provide services in cases involving juvenile offenders before a court consistent
41 with the court's statutory powers; or

42 (2) agree in accordance with Chapter 791, Government Code, to jointly employ a case manager.

1 (b) A local entity may apply or more than one local entity may jointly apply to the criminal justice division of the
2 governor's office for reimbursement of all or part of the costs of employing one or more juvenile case managers from
3 funds appropriated to the governor's office or otherwise available for that purpose. To be eligible for reimbursement,
4 the entity applying must present to the governor's office a comprehensive plan to reduce juvenile crimes in the
5 entity's jurisdiction that addresses the role of the case manager in that effort.

6 (c) A county or justice court on approval of the commissioners court or a municipal court on approval of the city
7 council may employ one or more full-time or part-time juvenile case managers to assist the court in administering its
8 juvenile docket and in supervising its court orders in juvenile cases.

9 (d) Pursuant to Article 102.0174, the salary and benefits of the juvenile case manager may be paid from the
10 creation of a juvenile case manager fund.

11 (e) A juvenile case manager employed under subsection (c) shall give priority attention to failure to attend school
12 and parent contributing to nonattendance cases.

13
14 **Code of Criminal Procedure Article 102.0174. Court costs; juvenile case manager fund**

15 (a) The governing body of a municipality by ordinance may create a juvenile case manager fund and may require a
16 defendant, who is a child, convicted of a fine-only misdemeanor offense in a municipal court to pay a juvenile case
17 manager fee not to exceed \$5 as a cost of court.

18 (b) The commissioners court of a county by order may create a juvenile case manager fund and may require a
19 defendant, who is a child, convicted of a fine-only misdemeanor offense in a justice court, county court, or county
20 court at law to pay a juvenile case manager fee not to exceed \$5 as a cost of court.

21 (c) In this article, a defendant is considered convicted if:

22 (1) a sentence is imposed on the defendant;

23 (2) the defendant receives deferred disposition, including deferred proceedings pursuant to either Article
24 45.052 or Article 45.053; or

25 (3) the defendant receives deferred adjudication in county court.

26 (d) The clerks of the respective courts shall collect the costs and pay them to the county or municipal treasurer,
27 as appropriate, or to any other official who discharges the duties commonly delegated to the county or municipal
28 treasurer, as appropriate, for deposit in a fund to be known as the juvenile case manager fund. A fund designated by
29 this subsection may be used only to fund the salary and benefits of one or more juvenile case managers pursuant to
30 Article 45.056.

31 (e) The juvenile case manger fund shall be administered by, or under the direction of, the commissioners court or
32 under the direction of the governing body of the municipality.

33 (f) The ordinance or order shall authorize the judge or justice to waive the fee in a case of financial hardship.

34
35 **Comment**

36 Pursuant to the approval of local government, Subsection (c) permits a county, justice or municipal court to
37 employ a juvenile case manager and to pay his or her salary (in it entirety or in part) through the adoption of a
38 juvenile case manager fund. Local governments wanting to employ a juvenile case manager would be authorized to
39 adopt a local court cost not to exceed five dollars. The court cost would only be assessed in cases involving juvenile
40 offenders. The purpose is to increase the number of county, justice and municipal courts that have juvenile case
41 managers.

1 **Alcoholic Beverage Code**

2 **Alcoholic Beverage Code § 106.11 is repealed.**

3
4

Comment

5 Section 106.11 of the Alcoholic Beverage Code is an antiquated statute that conflicts with the provisions
6 relating to the appearance of parents contained in Article 45.0215 of the Code of Criminal Procedure. Under Texas
7 law, an individual is an adult upon reaching age 17. Under the Code of Criminal Procedure, upon reaching age 17,
8 parents are not required to attend court with their child. Section 106.11 is not in accord with Chapter 45 of the
9 Code of Criminal Procedure and requires parental attendance even with the accused is 17 years old.

10

11 **Alcoholic Beverage Code § 106.071. Punishment for Alcohol-Related Offense by Minor**

12 (f) ~~Under this section [For the purpose of determining whether a minor has been previously convicted of an~~
13 ~~offense to which this section applies]:~~

14 (1) ~~a prior [an] adjudication under Title 3, Family Code, that the minor engaged in conduct described by this~~
15 ~~section is considered a conviction[under this section]; and~~

16 (2) ~~a prior [an] order of deferred disposition for an offense alleged under this section is considered a~~
17 ~~conviction[of an offense under this section].~~

18 (i) A defendant who is not a child and who has at least two prior convictions ~~[been previously convicted at least~~
19 ~~twice]~~ of an offense to which this section applies is not eligible to receive a deferred ~~[deferral of final]~~ disposition or
20 deferred adjudication ~~[of a subsequent offense].~~

21
22

Comment

23 This amendment makes it clear that for third alcohol-related offense, a minor (17 or older) cannot receive
24 deferred adjudication in county court.

25

26 **Alcoholic Beverage Code § 106.041. Driving Under the Influence of Alcohol by a Minor**

27 (f) A minor who commits an offense under this section and who has been previously convicted twice or more of
28 offenses under this section is not eligible for deferred disposition or deferred adjudication.

29 (h) A defendant who is not a child and who has at least two prior convictions ~~[been previously convicted at least~~
30 ~~twice]~~ of an offense to which this section applies is not eligible to receive a deferred ~~[deferral of final]~~ disposition or
31 deferred adjudication ~~[of a subsequent offense].~~

32
33

Comment

34 This amendment makes it clear that for a third offense of driving under the influence of alcohol by a minor,
35 the minor (17 or older) is not eligible for deferred adjudication in county court.

36

37 **Transportation Code**

38 **Transportation Code § 521.3452. Procedure in Cases Involving Minors**

39 A court shall report to the Department of Public Safety a person charged with a traffic offense under this chapter
40 who does not appear before the court as required by law. In addition to any other action or remedy provided by law.

1 the department may deny renewal of the person's driver's license under Section 521.310 or Chapter 706. The court
2 also shall report to the department on final disposition of the case.

4 **Comment**

5 This section and the following one merely move the license suspension provision currently located in Section
6 729.003 of the Transportation Code to a better location in the Transportation Code.

8 **§ 729.003, Transportation Code, is repealed.**

10 **Comment**

11 See Comment on Transportation Code §521.3452. Procedure in Cases Involving Minors.

13 **Education Code**

14 **Education Code § 25.094. Failure to Attend School**

15 (d) It is an affirmative defense to prosecution under this section that one or more of the absences required to be
16 proven under subsection (a) ~~[was] were~~ excused by a school official or ~~[should be] are~~ excused by the court or that
17 one or more of the absences ~~[was] were~~ involuntary if there are insufficient unexcused voluntary absences remaining
18 to constitute failure to attend school. The burden is on the respondent to show by a preponderance of the evidence
19 that the absence has been or should be excused or that the absence was involuntary. A decision by the court to
20 excuse an absence for purposes of this section does not affect the ability of the school district to determine whether
21 to excuse the absence for another purpose.

22 Subsection (g) is repealed.

24 **Comment**

25 This section and Section 51.03 of the Family Code are amended to make it clear that the affirmative defense
26 of excused absences or involuntary absences apply to defeat a proceeding for truancy or failure to attend school only
27 when there are insufficient unexcused and voluntary absences remaining to constitute a violation of law.

29 **Education Code § 25.0951. School District Complaint or Referral for Failure to Attend School**

30 (a) If a student fails to attend school without excuse on 10 or more days or parts of days within a six-month
31 period in the same school year, a school district shall within two school days:

32 (1) file a complaint against the student or the student's parent or both in a county, justice, or municipal court
33 for an offense under Section 25.093 or 25.094, as appropriate, or refer the student to a juvenile court in a county
34 with a population of less than 100,000 for conduct that violates Section 25.094; or

35 (2) refer the student to a juvenile court for conduct indicating a need for supervision under Section
36 51.03(b)(2), Family Code.

37 (b) If a student fails to attend school without excuse on three or more days or parts of days within a four-week
38 period but does not fail to attend school for the time described by Subsection (a), the school district may:

39 (1) file a complaint against the student or the student's parent or both in a county, justice, or municipal court
40 for an offense under Section 25.093 or 25.094, as appropriate, or refer the student to a juvenile court in a county
41 with a population of less than 100,000 for conduct that violates Section 25.094; or

1 (2) refer the student to a juvenile court for conduct indicating a need for supervision under Section
2 51.03(b)(2), Family Code.

3 (c) In this section, "parent" includes a person standing in parental relation.

4 (d) A school superintendent, principal, attendance officer, or other school official commits an offense if he or she
5 intentionally or knowingly refuses or fails to file or cause to be filed a complaint in justice, municipal, county or
6 juvenile court contrary to the requirements established by subsection (a). An offense under this subsection is a Class
7 C misdemeanor.

8 **Comment**

10 When the requirement of prompt filing was enacted in 2001, the legislature decided to give the education
11 establishment an opportunity to comply voluntarily with the law without imposing a criminal punishment for failing to
12 do so. It is now clear there are enough districts deliberately ignoring the prompt filing requirement to necessitate
13 imposing a criminal punishment for noncompliance. This amendment also imposes a time requirement on the school
14 district for action.

15 **Human Resources Code**

16 **Human Resources Code § 61.0434**

17 § 61.0434. Contraband Money Deposited in Student Benefit Fund.

18 (a) Money possessed by children at facilities under the jurisdiction of the commission that is determined to be
19 contraband money according to commission rules shall be deposited to the student benefit fund and used for the
20 purposes described in Section 61.0431.

21 (b) In this section, "contraband money" means money that is possessed by a child who has received prior notice
22 that its possession at the facility violates commission rules.

23 **Comment**

24 This new provision in TYC's enabling act would require that any money possessed by youth in TYC facilities
25 that is in excess of the amount allowed under TYC rules be deposited to the student benefit fund. Agency rules to
26 implement this provision must provide procedural protections to ensure that the youth have notice of the rule
27 prohibiting their possession of the money and allow consideration of any defense or mitigating circumstance they
28 might have to offer. Depriving youth of the personal benefit of this medium of exchange when it is discovered is
29 necessary for the safety and security of the entire facility. Prohibiting or limiting the amount of money youth may
30 possess in TYC facilities is important in stemming the presence of other contraband there, particularly of drugs.

31 According to Section 61.0431, Human Resources Code, money deposited to the student benefit fund may be
32 used only to "provide education, recreation, and entertainment to children committed to the commission" or to
33 reimburse youth for lost or damaged personal property. Other money deposited to the student benefit fund includes
34 proceeds from the operation of canteens and vending machines, proceeds from youth fund-raising projects, and
35 private donations for student activities.

1 **Human Resources Code § 61.079**

2 Sec. 61.079. Referral of Violent and Habitual Offenders for Transfer.

3 (a) After a child sentenced to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code,
4 becomes 16 years of age but before the child becomes 21 years of age, the commission may refer the child to the
5 juvenile court that entered the order of commitment for approval of the child's transfer to the institutional division of
6 the Texas Department of Criminal Justice if:

7 (1) the child has not completed the sentence; and

8 (2) the child's conduct, regardless of whether the child was released under supervision under Section 61.081,
9 indicates that the welfare of the community requires the transfer.

10 (b) The commission shall cooperate with the court on any proceeding on the transfer of the child.

11 (c) If a child is released under supervision, a juvenile court adjudication that the child engaged in delinquent
12 conduct constituting a felony offense, a criminal court conviction of the child for a felony offense, or a determination
13 under Section 61.075(4) revoking the child's release under supervision is required before referral of the child to the
14 juvenile court under Subsection (a).

15
16 **Comment**

17 A youth sentenced to commitment to TYC who is released on parole prior to age 19 remains under TYC's
18 parole supervision until age 21. During that time, the youth is subject to being referred by TYC back to the juvenile
19 court for consideration of transfer to prison to complete the determinate sentence. In order for the transfer request
20 to be made, the criteria of Section 61.079 (a) must be met and a parole revocation hearing must be held revoking the
21 youth's parole. The legislative intent of the parole revocation hearing requirement is to ensure that the youth has
22 the opportunity for hearing on the misconduct that prompts TYC's transfer request. The proposed amendment
23 would permit that legislative intent to be met by a juvenile court adjudication or criminal court conviction of the
24 youth for a felony offense. Such an adjudication or conviction would make the conduct of an administrative parole
25 revocation hearing on the same offense unnecessary for a transfer request.

26
27 **Human Resources Code § 61.081**

28 § 61.081. Release Under Supervision.

29 (a) The commission may release under supervision any child in its custody and place the child in his or her home
30 or in any situation or family approved by the commission. Prior to placing a child in his or her home, the commission
31 shall evaluate the home setting to determine the level of supervision and quality of care that is available in the home.

32 (b) Subject to legislative appropriation, the commission may employ parole officers to investigate, place,
33 supervise, and direct the activities of a parolee to ensure the parolee's adjustment to society in accordance with the
34 rules adopted by the commission.

35 (c) Parole officers may work with local organizations, clubs, and agencies to formulate plans and procedures for
36 the prevention of juvenile delinquency.

37 (d) The commission may resume the care and custody of any child released under supervision at any time before
38 the final discharge of the child.

39 (e) Not later than 10 days before the day the commission releases a child under this section, the commission shall
40 give notice of the release to the juvenile court and the office of the prosecuting attorney of the county in which the
41 adjudication that the child engaged in delinquent conduct was made.

1 (f) If a child is committed to the commission under a determinate sentence under Section 54.04(d)(3), Section
2 54.04(m), or Section 54.05(f), Family Code, the commission may not release the child under supervision without
3 approval of the juvenile court that entered the order of commitment unless the child has served at least:

4 (1) 10 years, if the child was sentenced to commitment for conduct constituting capital murder;

5 (2) 3 years, if the child was sentenced to commitment for conduct constituting an aggravated controlled
6 substance felony or a felony of the first degree;

7 (3) 2 years, if the child was sentenced to commitment for conduct constituting a felony of the second
8 degree; or

9 (4) 1 year, if the child was sentenced to commitment for conduct constituting a felony of the third degree.

10 (g) The commission may request the approval of the court under this section at any time.

11 (h) Notwithstanding subsection (f), if a child is committed to the commission under a determinate sentence
12 under Section 54.04(d)(3), Section 54.04(m), or Section 54.05(f), Family Code, the commission may release the child
13 under supervision without approval of the juvenile court that entered the order of commitment when 9 months or
14 less remain before the child's discharge under Section 61.084 (b).

15 (i) ~~(h)~~ If the commission finds that a child has violated an order under which the child is released under
16 supervision, on notice by any reasonable method to all persons affected, the commission may order the child:

17 (1) to return to an institution;

18 (2) if the violation resulted in property damage or personal injury:

19 (A) to make full or partial restitution to the victim of the offense; or

20 (B) if the child is financially unable to make full or partial restitution, to perform services for a
21 charitable or educational institution; or

22 (3) to comply with any other conditions the commission considers appropriate.

23 24 **Comment**

25 Under Section 61.084 (b), Human Resources Code, TYC must discharge a youth who has been sentenced to
26 commitment to TYC when the time the youth spent in detention in connection with the committing case and the
27 time spent in TYC equals the period of the sentence. For youth whose discharge under this provision occurs prior to
28 the end of the period during which juvenile court approval for release on parole is required under Section 61.081(f),
29 Human Resources Code, this usually means discharge directly from an institution with no opportunity for transition on
30 supervised parole back into the community. It also usually means that the youth had no incentive while in the
31 institution to apply himself or herself to the education and treatment programs offered there. The amendment
32 would authorize TYC in this situation to release the youth on parole, without juvenile court approval, when 9 months
33 remain on the youth's sentence before discharge. The 9-month period is the minimum parole period established for
34 other TYC youth.

35 36 **Human Resources Code § 141.042. Rules Governing Juvenile Boards, Probation Departments, Probation** 37 **Officers, Programs, and Facilities.**

38 (a) The commission shall adopt reasonable rules that provide:

39 (1) minimum standards for personnel, staffing, case loads, programs, facilities, record keeping, equipment,
40 and other aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation
41 services;

1 (2) a code of ethics for probation, ~~and~~ detention, ~~and corrections officers~~ and for the enforcement of that
2 code;

3 (3) appropriate educational, preservice and in-service training, and certification standards for probation ~~and~~ and
4 detention, ~~and corrections~~ officers or court-supervised community-based program personnel;

5 (4) minimum standards for public and private juvenile pre-adjudication secure detention facilities, public
6 juvenile post-adjudication secure correctional facilities that are operated under the authority of a juvenile board, and
7 private juvenile post-adjudication secure correctional facilities, except those facilities exempt from certification by
8 Section 42.052(g); and

9 (5) minimum standards for juvenile justice alternative education programs created under Section 37.011,
10 Education Code, in collaboration and conjunction with the Texas Education Agency, or its designee.

11 (b) In adopting the rules, the commission shall consider local information and evidence gathered through public
12 review and comment.

13 (c) The commission shall operate a statewide registry for all public and private juvenile pre-adjudication secure
14 detention facilities and all public and private juvenile post-adjudication secure correctional facilities except a facility
15 operated or certified by the Texas Youth Commission.

16 (d) The commission shall biennially inspect all public and private juvenile pre-adjudication secure detention
17 facilities and all public and private juvenile post-adjudication secure correctional facilities except a facility operated or
18 certified by the Texas Youth Commission and shall biennially monitor compliance with the standards established under
19 Subsection (a)(4) if the juvenile board has elected to comply with those standards or shall biennially ensure that the
20 facility is certified by the American Correctional Association if the juvenile board has elected to comply with those
21 standards.

22 (e) Juvenile probation departments shall use the mental health screening instrument selected by the commission
23 for the initial screening of children under the jurisdiction of probation departments who have been formally referred
24 to the department. The commission shall give priority to training in the use of this instrument in any preservice or in-
25 service training that the commission provides for probation officers. Juvenile probation departments shall report data
26 from the use of the screening instrument to the commission in a format and in the time prescribed by the
27 commission.

28 (f) Repealed by Acts 2003, 78th Leg., ch. 283, § 61(3).

29 (g) Any statement made by a child and any mental health data obtained from the child during the administration
30 of the mental health screening instrument under this section is not admissible against the child at any other hearing.
31 The person administering the mental health screening instrument shall inform the child that any statement made by
32 the child and any mental health data obtained from the child during the administration of the instrument is not
33 admissible against the child at any other hearing.

34 (h) A juvenile board that does not accept state aid funding from the commission under Section 141.081 shall
35 report to the commission each month on a form provided by the commission the same data as that required of
36 counties accepting state aid funding regarding juvenile justice activities under the jurisdiction of the board. If the
37 commission makes available free software to the board for the automation and tracking of juveniles under the
38 jurisdiction of the board, the commission may require the monthly report to be provided in an electronic format
39 adopted by rule by the commission.

40 **Comment**

41 The changes in this section delete the reference to "corrections" officer. TJPC has consolidated the two
42 categories of "detention" and "corrections" officers into one category of "detention" officer.

1 **Human Resources Code § 141.0611. Minimum Standards For Detention Officers.**

2 (a) To be eligible for appointment as a detention officer, a person who was not employed as a detention officer
3 before September 1, 2005, must:

4 (1) be of good moral character:

5 (2) be at least 21 years of age:

6 (2) have acquired a high school diploma or its equivalent:

7 (3) have satisfactorily completed the course of preservice training or instruction required by the commission;

8 (5) have passed the tests or examinations required by the commission; and

9 (6) possess the level of certification required by the commission.

10
11 **Comment**

12 The Texas Human Resources Code Section 141.061 details the minimum standards for probation officers.
13 There is no current corollary provision for detention officers. This new section 141.0611 adds statutory requirements
14 for detention officers.

15
16 **Human Resources Code § 141.065. Persons Who May Not Act As Chief Administrative Officer, Juvenile**
17 **Probation ~~Or~~, Detention, ~~Or~~ Corrections Officers.**

18 A peace officer, prosecuting attorney, or other person who is employed by or who reports directly to a law
19 enforcement or prosecution official may not act as a chief administrative officer, juvenile probation ~~or~~ , detention, ~~or~~
20 corrections officer or be made responsible for supervising a juvenile on probation. For purposes of this provision, a
21 chief administrative officer, regardless of title, is the person hired, appointed, or under contract with and/or by the
22 juvenile board and who is responsible for the oversight of the operations of the juvenile probation department and
23 any juvenile justice programs operated by or under the authority of the juvenile board.

24
25 **Comment**

26 This changes attempts to clarify that the chief administrative officer of a juvenile probation department may
27 not be a law enforcement officer. Also, the reference to "corrections" officer has been deleted since the two
28 categories of "detention" and "corrections" officers have been combined into one category of "detention" officer.

29
30 **Other Recommended Changes**

31 It is recommended that all statutory references within Title 3 of the Texas Family Code to the Texas
32 Department of Mental Health and Mental Retardation, the Texas Department of Protective and Regulatory Services
33 and all other Health and Human Service Commission agencies be updated to reflect the new names of these agencies
34 pursuant to last session's consolidation efforts resulting from House Bill 2292.

35 This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house,
36 as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate
37 effect, this Act takes effect September 1, 2005 and except as noted should apply only to offenses committed on or
38 after that date.

39 The exceptions should be: FC 51.20, 52.015, 53.03, 54.01(both amendments), 54.012, 54.04, 54.05, 54.10,
40 58.003 (all three amendments), 58.0072, 58.104, 58.106, 58.203, 58.207, 58.208, 58.211, 58.301, 58.303, 58.305,
41 261.101, 261.405, CCP 15.27, 24.011, 45.0215, Transportation Code 521.3452, 729.003, Human Resources Code

- 1 61.0434, 141.042, 141.0611, 141,065 should apply to a juvenile proceeding that occurs or official decision made on
- 2 or after the effective date.
- 3 FC 58.106 should apply to a juvenile record created on, after or before the effective date.