

Juvenile Justice

Legislative and Caselaw Update

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Bills, Bills, Bills.....

- This Session the Legislature forwarded over 1,700 bills to the Governor for consideration. Many of those bills directly affect our practice in Juvenile Justice.
- Here's what happened:

Failure to Attend School

- SB407 – Made changes to GC 54.1172 allowing a county judge to appoint part-time (and full-time) magistrates to hear FTAS and Parental Contribution to Nonattendance cases.

Training for Judges

- HB1793 – Requires two hours of training every five years on child welfare issues and on the Individuals with Disabilities Education Act.
- Applies to Judges who hear complaints against children that are fine-only (excluding traffic and P/I offenses).

JP and Muni Courts Orders of Nondisclosure

- SB1056 – Modifies the GC 411.081(f-1)
 - Courts in non-CINS, fine-only matters must, upon conviction, immediately issue an order of nondisclosure prohibiting CJAs from disclosing to the **public** any criminal history info. related to the offense. CJAs and various listed agencies will still have access.

Juvenile Court Sealing Statute

- HB 2386 amends TFC 58.003 by adding (c-1) and (c-2) that provide for immediate sealing of juvenile record upon successful completion of a drug court program.
 - Allows prosecutor and probation department to maintain a record of such completion until child has turned 17.

Nonsecure Correctional Facilities

- HB 3689 defines them in TFC 51.02 (only take juvenile probationers and are operated by or under contract with a governmental unit), and provides in TFC 51.126 that they must be regulated by TJPC and inspected annually by TJPC and the local Juvenile Board.

Jury Composition

- HB609 – Modifies TFC 54.03(c) to provide for 6 person juries in misdemeanor cases being tried in a District Court.

– Conforms to CCP 33.01(b).

Written Materials to be considered in Certification Cases

- SB518 – Modifies TFC54.02(e) to require the Court to give access to all written materials to be considered by the Court in making the transfer/cert decision, to both the prosecution and defense at least 5 days before the hearing.

Post-Trial Counseling for Jurors

- HB608 – Adds TFC 57.003(g) to provide that Jurors in cases involving graphic evidence are eligible for up to 10 hours of counseling through local JPD/victims assistance department.
- Only happens if Juvenile Board and Commissioner’s Court agree to program.
- Juror must make request within 180 days after trial.

Probation Conditions in Graffiti Cases

- HB1633 – modifies TFC 54.046 to require:
 - restitution or restoration as COP;
 - 15-30 hours of community service.

Local JPD handles the money.

Juvenile Court and CPS Court Communication

- HB1629 – Modifies TFC 54.04(y) to authorize Juvenile Court and CPS Court (with jurisdiction over the child) to communicate prior to disposition hearing.
- Juvenile Court may allow parties to SAPCR to participate.

Motions for New Trial

- HB1688 – Modifies TFC 56.01(b-1) and 51.17(a) to make it clear that:
 - Motions for New Trial are governed by Rule 21, TRAP, and
 - The deadline for filing is 30 days after signing of dispositional order.

JCMS – Juvenile Justice Case Management System

- SB58 – Essentially clarifies and gives teeth to TFC 58.403 which authorizes a statewide juvenile information system that is overseen by TJPC.

Foster Children in TYC

- HB1629 – Adds HRC 61.0766 and .0767 requiring reports from TYC to the Court handling the CPS case, and requires TYC and HHSC to work together on services for these youth.

Pregnant Juveniles in TYC

- HB3653 adds HSC 61.07611, which severely limits the use of restraints on a pregnant child in the custody of TYC when that child is in labor, delivery, or recovery.

Continuity of Care for Youth Discharged from TYC because MI/MR

- HB4451 – Adds HRC 61.077 which provides eligibility for continuity of care services from TCOOMMI for children discharged from TYC because they are MI or MR.
 - TCOOMMI is the Texas Correctional Office on Offenders with Medical or Mental Impairments
- Adds HRC 614.019(b) – continuity of care for TYC parolees aged 17-18.
- Adds HRC 614.019(c) – continues continuity of care for at least 90 days or until local MH/MR takes over

Mental Health Commitments for Sentenced Offenders in TYC

- HB4451 – Adds HRC 61.0773 – which gives TYC the authority to initiate a TFC 55.11 hearing (mental illness) in the committing court for a youth who is in TYC's custody on a determinate sentence.
 - If granted, child gets credit for time at mental health facility.
 - Child may not be released or furloughed.
 - Court decides whether R goes home, back to TYC, or on to TDCJ when MH commitment ends.

**CHIP/Medical Assistance
following Release**

- HB 1630 – Amends GC 531.02418 to provide that HHSC, TYC and TJPC must enter into MOU regarding assessing eligibility for child to receive CHIP/medical assistance.
 - Must assess PRIOR to release from:
 - TYC, placement, or detention

**Testing for Exposing JPD
Employees to Diseases**

- HB3005 – Amends HSC 81.050(b)(6) to add JPD employees to the list of folks who can request an order for involuntary testing of persons suspected of exposing them to certain diseases.

**Guns for
Juvenile Probation Officers**

- SB 1237 – Amends HRC 142.066 to allow JPOs to carry guns at work if:
 - TCLEOSE certificate; and
 - Chief JPO authorizes; and
 - Worked at least 1 year; and
 - NOT found to be an ANE perpetrator.

Annual Reports by TJPC

- SB 1374 – Amends HRC 141.024(a)(2) to require TJPC to evaluate the effectiveness of these new community-based alternatives to TYC commitment, and to compare their costs to those at TYC.

Councils and Task Forces

- SB 1646 – Amends GC 531.802 to create the Council of Children & Families, created to ensure access to needed services.
- SB 1824 – Amends HSC 115.003 to create an Interagency Task Force for Children with Special Needs, to evaluate funding, services, needs and gaps in service.

Omnibus Gang Bill

- HB 2086 – a pretty comprehensive overhaul of all things “gang.”
 - Expands definition of EOC (PC 71.02(a)).
 - Creates new offense of Directing Activities of Gang – 1st degree Felony (PC 71.023).
 - Creates Gang-Free Zones (PC 71.028).
 - Provides for Civil Actions (CPRC 125.070).
 - Allows for Asset Forfeitures (CCP 59.01).

Omnibus Gang Bill

- HB 2086, cont.
 - Provides for “gang-related activity” court finding (CCP 42.0197).
 - Can’t associate with non-family gang members while on probation (CCP 42.12).
 - EM as probation and parole condition (CCP 42.12 and GC 508.227).
 - Driving Restrictions - when/where (CCP 42.12).

Omnibus Gang Bill

- HB 2086, cont.
 - Gang Intervention Program as COP or TYC release (TFC 54.0491).
 - Gang Database Criteria now include what you post/do on Internet, as well as visiting a non-family gang member in confinement (CCP 61.02).
 - Purge Date – increased from 3 to 5 years (CCP 61.06).
 - Allows for Roving Wiretaps (goes with the person, not the place) (CCP 18.20).

Coercing, Inducing or Soliciting Gang Membership

- HB 2187 – Repeals, modifies, and recodifies PC 22.015 as new PC 71.022
 - adds threats of bodily injury or actual bodily injury to the child, or a member of the child’s family.

Gang Intelligence Database

- SB 418 – Amends Chapter 61 of CCP to REQUIRE a local or regional database in all counties larger than 100,000, and cities larger than 50,000.

Dog Fighting

- SB 554 – Class A Misd to own or possess dog-fighting equipment, adds dog fighting to EOC, and provides for asset forfeiture. See PC 42.10 and 71.02, and CCP Art. 59.

Playgrounds added to Drug Free Zones

- HB 2467. See HSC 481.034(a)(3).

Sex Offenders

- HB 549 – Amends PC 21.11 and 21.12 to provide an affirmative defense to Sexual Assault (child) and Improper Relation with Student if actor is married to victim.
- HB 1985 – Mandatory HIV testing for defendant within 48 hours of indictment for certain sex offenses if requested by victim or court (CCP 21.31).

Sex Offenders

- SB 689 – Use of Internet – Requires certain sex offenders to disclose all electronic ID info and to provide law enf. and social networking sites with info to track them. CCP 42.12.
- SB 743 – Expands time allowable for execution of a DNA search warrant to 15 days. CCP 18.07.

Sex Offenders

- SB727 – DNA samples
 - defendant must pay for it if required to submit
 - all adult felons must provide it, even if on PROBATION
 - additional CCs (CCrP Art. 102.020, .021, 42.12(j))
- Difference for juveniles: DNA required for
 - All kids committed to TYC
 - Probationers, but only if
 - 3(g) offense or felony where DW used/exhibited
 - TFC 54.0409, 54.0462, 61.002

Sex Offenders

- SB 2048 – Amends Chapter 62, CCP to allow for creation of a county-wide sex offender registration authority in counties of 100,000+, all in one location run by the Sheriff or a Chief of Police.

Human Trafficking

- HB 2730 provides for a D/L suspension upon adjudication for certain versions of human trafficking. TFC 54.042(a)(1).
- HB 1372 – Amends CCP 56.01(3) to add human trafficking to definition of victim for purposes of CVC, etc.

Crime Victims

- HB 1372 – Amends CCP 56.01(3) to add human trafficking to definition of victim for purposes of CVC, etc.
- HB 1470 – If school district EE assaulted, ISD must notify them of availability of leave time, and must provide them with an informational handbook. EC 22.003.

Crime Victims

- HB 2236 – Court must consider impact of a continuance on victim in cases involving FV or cases involving assault or sexual assault of a child younger than 17. CCP 56.02(a).
- HB 2465 – Allows for depositions of elderly or disabled victims or witnesses. CCP Ch. 39.

Crime Victims

- HB 2626 – Amends CCP Ch. 56, and HSC 323.004 and .005 to provide for free forensic examinations of sexual assault victims who do not wish to prosecute or otherwise involve law enforcement.
- HB 4136 – Amends CCP to add Ch. 57C, which requires court to seal medical records of a child who is a victim of certain violent or sexual offenses.

Crime Victims

- HB 2846 – Sex Offenses - Outcry Statements now admissible at age 13 and under, plus can be used in punishment to prove extraneous offenses. CCP 38.072.
- HB 2916 and SB 808 – now 3 year deadline from time victim is identified for victim to file for CVC. Also allows for payments for very old offenses. CCP 56.37, 56.61.

Crime Victims

- HB 4009 – Human Trafficking – sets up an assistance program for victims, grants for service providers, training, studies, etc. GC Ch. 402.
- HB 4464 – Amends CCP 42.01 and 42.037(g) to provide that victim’s name and address need not be in the judgment, rather must include name of person or agency who will receive funds on victim’s behalf.

Crime Victims

- SB 83 – Allows for early termination of a lease if offense (sex asst, agg sex asst, continuous sexual abuse of child) took place on the leased property. For benefit of victim, or parent/guardian of victim. This is in addition to FV terminations already provided for. Property Code Sec. 92.016.

Penal Code Section 8.07(a)

- HB558 - Public Intoxication – makes it a *crime* (class C) for children, rather than a *juvenile* matter, and removes the under 15 y/o limit on prosecution.

Penal Code Section 12.31

- SB839 – does away with life without parole for juveniles certified to stand trial as an adult and returns it to the old rule of 40 years to do before parole eligibility.

Penal Code Section 22.01(b), (b-1),(f), and (g)

- HB2066 – ABI-FV – is a 3rd degree Felony if by strangulation or suffocation, is 2nd degree Felony if prior conviction (DFAJ) for certain listed offenses.

Penal Code Section 22.02(b)

- HB176 – Aggravated Assault DW – becomes a 1st degree Felony if it's a drive-by shooting at a house, building, or vehicle which causes SBI.

Penal Code Section 25.11

- HB2240 – New offense of Continuous Family Violence – 3rd degree Felony – all you have to do is engage in conduct that constitutes ABI 2 or more times in 12 months with anyone that you are related to, live with, have kids with, date, used to date, are married to or are divorced from.

Penal Code Section 28.02

- HB3224 – Arson – this is an attempt to fix the current statute – it creates a SJF for starting a fire or causing an explosion and thereby recklessly causing damage to a building or harm to a person.

Penal Code Section 31.03(e)

- HB348 – theft of aluminum, copper, bronze wire, cable, tubing, rods, water gate stems is SJF if less than \$20,000.
- HB1282 – theft of drivers license or state ID in now a Class B.
- HB1466 – theft of military grave marker is now a SJF.

Penal Code Sec. 33.07

- HB2003 – New offense of Online Harassment – 3rd Degree Felony to use someone else’s identifying information on the internet without permission and with intent to harm, defraud, intimidate or threaten a person;
 - Class A Misdemeanor to use same info without permission and with intent to cause the recipient to believe it was legitimate and with intent to harm or defraud any person.

Penal Code Sec. 37.10(c)(2)

- HB1813 – Tampering with Government Record – related to forensic analyses – it is a 3rd Degree Felony to tamper with written reports of analysis of physical evidence; also offense to tamper with maintenance records of equipment used to do the testing.

Penal Code Sec. 38.04(b)

- HB221 – Evading Arrest – now a SJF if previously convicted. Note – it does NOT say “adjudicated.”

Penal Code Sec. 38.11

- HB3228 – Prohibited Substances and Items in Correctional Facilities – now covers providing AND possessing with intent to provide; also tightens up restrictions on cell phones in correctional facilities.

Penal Code Sec. 38.14

- HB1721 – Expands Taking or Attempting to Take a Weapon from a Peace Officer – to include taking a weapon from an employee or official of a correctional facility – 3rd Degree if successful, SJF if unsuccessful.
- HB3147 – Expands to include taking a weapon from a Commissioned Security Officer.

Penal Code Sec. 42.10(a),(b),(e)

- SB554 – Dog Fighting – now is an offense to own or possess dog fighting equipment. Also adds dog fighting to EOC.

Penal Code Sec. 46.01(11)

- HB4456 – regarding definition of a switchblade knife for purposes of prohibited weapons laws – written to exclude regular one-hand opener knives (knob, indentation) from the definition.

Penal Code Sec. 46.14

- SB2225 – Firearms Smuggling – transferring or transporting firearms acquired in violation of Texas or federal law
 - must do it more than once OR do it for money
 - does NOT apply to peace officers
 - it's a 3rd Degree Felony UNLESS 3 or more firearms involved, in which case it's a 2nd.
- Also, makes it EOC under PC 71.02.

CCrP Art. 14.031(a,b), and 45.058(a,f,g and g-1)

- HB558 – Public Intoxication – Officer does not have to arrest for PI – can release to another adult
 - if a child, can field release to parent/guardian w/citation;
- Also, gives muni./JP courts original jurisdiction over juvenile PI cases.

CCrP Art. 38.11 and 38.111

- HB670 – Qualified Journalist Privilege – reporters now have a state-law journalist shield law – it provides different privileges between civil matters and criminal matters.

CCrP Art. 15.08 and 15.09

- HB1060 – Provides specific authorization for faxing/electronic sending of arrest warrants.

CCrP Art. 36.29(c)

- HB1321 – Use of Alternate Jurors upon death/disability – expanded to allow for use of an alternate juror AFTER the jury has been charged.

CCrP Art. 38.02

- HB1360 – Release of information by prosecution to defense is NOT a voluntary release of information to the public under Govt. Code.

CCrP Art. 18.20

- HB3228 – expands the detection and monitoring options regarding wireless communications in a correctional facility (TDCJ, TYC, etc.); does away with the need for a warrant, expands prosecution possibilities, declares no expectation of privacy in those facilities.

CCrP Art. 13.34

- HB3316 – Venue statute regarding employee-on-child offenses at TYC – sets it in county of offense OR Travis County; allows the Special Prosecution Unit to assist in prosecution.
- HB3689 – this is the Omnibus TYC/TJPC/OIO bill – same change regarding venue.

CCrP Art. 38.43

- HB3594 – Preservation of Biological Evidence – this is for small counties (<100,000) – if is person imprisoned for 10+ years, then the prosecutor or the clerk transfers all biological evidence to DPS for storage.

CCrP Art. 18.01 and 42.12(m)

- SB328 – this is a BIG DWI bill – allows a magistrate attorney to sign SW for blood in refusal cases and increases fees.
 - NON-CCP changes include:
 - many D/L suspension changes
 - greatly expanded mandatory blood draws:
 - ANY injury requiring treatment; or
 - DWI w/child; or
 - prior DWI w/child, or intox. asst/man; or
 - 3rd DWI.

CCrP Art. 59.01(2) and 59.011

- SB554 – Property/equipment used in commission of dog fighting is “contraband” that can be forfeited.

CCrP Art. 38.45, 39.14, 39.15

- SB595 – Child Porn cases – the actual porn MUST be placed under seal, NO public access, defense counsel gets access but NO copy, porn must stay in state’s custody when defense looks at it.
- This should apply in juvenile proceedings because of TFC 51.17(b) – discovery governed by CCP.

CCrP Art. 38.075

- SB1681 – requires corroboration of jail-snitch testimony – otherwise it will be inadmissible.
- Should apply in juvenile proceeding because TFC 51.17(c) adopts Ch. 38 of CCP.

CCrP Art. 42.12(3g)

- SB1832 – Criminal Solicitation of Capital Murder is now a 3g offense – not eligible for court-ordered C/S or for release on parole until lesser of 50% or 30yrs, no release to mandatory supervision.

CCrP Art. 59.01(2)

- SB2225 – “contraband” includes anything used to commit firearms smuggling or unlawful transfer of a handgun, and is now subject to forfeiture.

Arizona v. Gant
556 U.S. ____ (2009)

- Warrantless Searches of a motor vehicle incident to arrest are only allowed if officer is:
 - Looking for weapons the defendant could get his/her hands on
 - Must have a reasonable belief that the arrestee might access the vehicle at the time of the search (implies that he/she must be unsecured and within reach of the vehicle; otherwise, belief likely not reasonable);
 - or Looking for evidence of the crime for which defendant arrested.

Arizona v. Gant
556 U.S. ____ (2009)

- In this case, D was arrested for DWLS. He was cuffed and placed in the back of the patrol car. Passengers also cuffed and placed in other patrol cars. Officers then searched his vehicle and found some cocaine in a jacket pocket.

Arizona v. Gant
556 U.S. ____ (2009)

- Search NOT valid. Why?
 - D was secured in back of patrol car, therefore had no access to any weapons in his vehicle
 - No reasonable expectation that evidence of the crime of DWLS would be found in D's vehicle.

- To read these bills, go to:

www.capitol.state.tx.us

Just type in the bill number, beginning with HB or SB.

Questions?

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