

PRE-TRIAL DETENTION ISSUES AND TAKING INTO CUSTODY

THE RESPONSIBILITIES OF A JUVENILE PROBATION OFFICER AND JUVENILE PROBATION DEPARTMENT IN THE DETENTION OF A CHILD IN THE JUVENILE JUSTICE PROCESS

The Family Code (**TFC**) addresses the subject of juvenile detention in several places:

52.01 - provides for the issuance by police of a warning notice in lieu of taking the child into custody

52.01(a)(4) - permits a child to be taken into custody “by a probation officer if there is probable cause to believe that the child has violated a condition of probation imposed by the juvenile court”

52.015(b) – authorizes any law enforcement or probation officer to execute a directive to apprehend issued by the juvenile court by taking the child into custody

52.02 - authorizes release by police of a child taken into custody on condition the child be brought to the juvenile court by parents or other responsible adults

53.02 – permits administrative release of a detained child by intake or other court workers

54.01 - creates a right to a detention hearing before a juvenile court judge, referee/master or detention magistrate

WHAT TYPE OF REFERRAL CAN GET A JUVENILE TO A JUVENILE DETENTION CENTER?

A. Delinquent Conduct/Conduct Indicating a Need for Supervision (CHINS)/ Probation Violation (VOP) TFC 51.03 (a) and 51.03 (b)

Delinquent Conduct is:

- 1) conduct, other than a traffic offense, that violates a penal law of this state or of the United States punishable by imprisonment or by confinement in jail;
- 2) conduct that violates a lawful order of a court under circumstances that would constitute contempt of that court in:
 - a) a justice or municipal court; or
 - b) a county court for conduct punishable only by a fine;
- 3) conduct that violates Section 49.04, 49.05, 49.06 or 49.08 Penal Code; or
- 4) conduct that violates Section 106.041 Alcoholic Beverage Code, relating to driving under the influence of alcohol by a minor (third or subsequent offense).

Conduct indicating a need for supervision (CHINS) is:

- 1) conduct other than a traffic offense, that violates:
 - a) the penal laws of this state of the grade of misdemeanor that are punishable by fine only; or
 - b) the penal ordinances of any political subdivision of this state;
- 2) the absence of a child on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period from school;
- 3) the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return;
- 4) conduct prohibited by city ordinance or by state law involving the inhalation of the fumes or vapors of paint and other protective coating or glue and other adhesives and the volatile chemicals itemized in Section 485.001, Health and Safety Code;
- 5) an act that violates a school district's previously communicated written standards of student conduct for which the child has been expelled under Section 37.007©, Education Code; or
- 6) conduct that violates a reasonable and lawful order of a court entered under Section 264.305.

B. Status Offender/Nonoffender
TFC 51.02 (15) and 51.02 (8)

A Status Offender is:

- 1) **51.02(15)** – defines a status offender as a child who is accused, adjudicated, or convicted for conduct that would not, under state law, be a crime if committed by an adult. This section provides a non-exhaustive list of examples of status offenses:
 - a) truancy under **51.03(b)(2)**
 - b) running away from home under **51.03(b)(3)**
 - c) failure to attend school
 - d) a fineable only offense under **51.03(b)(1)** transferred to the juvenile court
 - e) a violation of standards of student conduct under **51.01(b)(5)**
 - f) a violation of juvenile curfew ordinance
 - g) a violation of provision of the Alcoholic Beverage Code as applied to a minor

Each of these behaviors is prohibited for children, but not for adults.

A Nonoffender is:

51.02(8) - defines a nonoffender as a child who is subject to a court’s jurisdiction because the child is a victim of abuse, dependency or neglect or is a child who has been taken into custody and is being held solely for deportation out of the United States.”

POLICE DETENTION AND RELEASE DECISIONS

RELEASE AND REFERRAL

52.02(a)(1) – authorizes a police officer or other person who has taken a juvenile into custody to “release the child to a parent, guardian, custodian of the child, or other responsible adult upon that person’s promise to bring the child before the juvenile court as requested by the court.”

52.02 – provides the police with no criteria by which to decide who should be released and who should not, other than those implicit in the requirement that the release be made to a “responsible adult.”

FIREARMS OFFENSES (EXCEPTION TO POLICE RELEASE IN 52.02)

53.02(f) (1999) - a child who is “alleged to have engaged in delinquent conduct and to have used, possessed, or exhibited a firearm...in the commission of the offense **SHALL** be detained until the child is released at the direction” of a judge. Police are permitted to contact a judge for authorization to release, which can be done by telephone. Any judicial officer may authorize release of a child taken into custody for an offense involving a firearm.

FIREARMS OFFENSES: WHERE A CHILD MAY BE DETAINED

If a child is taken into custody for a firearms offense and not released by judicial order, the police must transport that child to the county’s designated place of juvenile detention.

However, the Legislature did provide for the needs of rural counties that might have difficulties complying with this mandatory detention provision.

51.12(i) – authorizes detention of a child under the mandatory firearms provision in the county jail or other facility until the child is released under **53.02(f)** or until a detention hearing is held as required by **54.01(p)**, regardless of whether the facility complies with the requirements of the section, but only in very limited circumstances. The limited circumstances include: there is no juvenile detention facility available in the county or an adjacent county, the facility has been designated by the county juvenile board, the child is separated by sight and sound from adults being detained, the child does not have any contact with staff who has contact with adults being detained.

WARNING NOTICES

52.019(c) - authorizes a law enforcement officer to “issue a warning notice to the child in lieu of taking him into custody” under certain circumstances. The warning notice is to be used instead of taking the child to the juvenile processing office or juvenile detention facility. A warning notice may be used instead of taking the child into custody only if the situation falls within guidelines promulgated by the law enforcement agency and approved by the juvenile board. It is the legislature’s intent that guidelines be issued by the law enforcement agency and approved by the juvenile court only for relatively minor offenses.

RELEASE AND DISPOSITION WITHOUT REFERRAL

INFORMAL DISPOSITIONS AND FIRST OFFENDER PROGRAMS

52.03 – authorizes the police to release a child taken into custody and NOT refer the case to the juvenile court.

52.031 - authorizes a first offender program. Disposition of a case through a first offender program is authorized only if it is permitted by guidelines that have been issued by the juvenile board.

If a case is disposed of under **52.03(b)(1)** or **52.031(e)**, there is immediate release from law enforcement custody and there is no referral of the case to the juvenile court unless the child fails to abide by the terms of the disposition.

52.032 – provides the juvenile board of each county, in cooperation with each law enforcement agency in the county, **SHALL** adopt guidelines for the disposition of a child under Section **52.03** or **52.032**. The guidelines adopted under this section shall not be considered mandatory. In other words, the juvenile board must have the guidelines, but they do not have to approve of a first offender program.

<h2>INTAKE DETENTION AND RELEASE DECISIONS</h2>
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Juvenile probation officers make or participate in making pre-hearing detention decisions concerning the child. Focus is upon the intake or screening duties of the juvenile probation officer. If a case is referred to juvenile court and the child is not released by the police, the child must be physically taken to the detention facility. Responsibility for releasing or detaining the child falls upon the intake or probation officers of the juvenile court.

There are two major decisions that must be made at the intake phase of the juvenile process: 1) deciding whether there is a case upon which to proceed further, and 2) if there is, deciding whether to proceed nonjudicially or whether a court hearing should be sought. This begins the “gate-keeping” function for the juvenile court.

The gate-keeping function is shared between probation and prosecution as modified by 1996 amendments to the Family Code and the details of the sharing arrangement are subject to local modification by agreement.

PRELIMINARY INVESTIGATION Section 53.01

Two determinations must be made via this preliminary investigation:

- 1) the person referred to juvenile court is a child Section 51.02 (2) TFC;
- 2) there is probable cause to believe the child engaged in delinquent conduct or conduct indicating a need for supervision Section 53.01(a)(2).

A finding by intake of no probable cause releases the child from custody but does not necessarily terminate the case. The prosecutor is empowered to overrule that finding.

A. Is the person a child?

The person must have been between the ages of 10 and 17 at the time the delinquent conduct or conduct indicating a need for supervision is believed to have occurred. There are two elements to this determination: the child's age and the date of the offense. The determination of age can be made on the basis of questioning the child. This can be done without warning the child and without violating the child's privilege against compelled self-incrimination. The child's age is a jurisdictional element for proceeding further in the juvenile system.

B. The probable cause determination.

This determination should not be based upon information obtained by questioning the child about the facts of the case, but instead should be made based upon the standard offense, incident or arrest report provide by law enforcement. The intake officer is not required to be persuaded beyond a reasonable doubt, since that is the proof required at the adjudication hearing and at this preliminary screening belief that the child engaged in delinquent conduct or conduct indicating a need for supervision.

C. Who conducts the investigation?

The law gives the juvenile board options to designate who has these responsibilities. Section 53.01 (a) provides that these functions are to be performed by "the intake officer, probation officer, or other person authorized by the board." However, Section 52.04(c) provides that even if the prosecutor is the sole intake office in a county, police and other referrals must first go through the probation department to enable a statistical record of the referrals to be made. In this case, the probation department is required to forward the referral to the prosecutor's office within three business days of receiving it.

D. Information needed. Upon what information are the required determinations to be based?

The preferable course of action is to make the determinations based on information provided by the person or agency making the referral. Section 52.04(a) requires that the following information be provided to the juvenile court when a case is referred:

- 1) all information in the possession of the person or agency making the referral pertaining to the identity of the child and his address, the name and address of the child's parent, guardian, or custodian, the names and addresses of any witnesses, and the child's present whereabouts;
- 2) a complete statement of the circumstances of the alleged delinquent conduct or conduct indicating a need for supervision;
- 3) when applicable, a complete statement of the circumstances of taking the child into custody; and
- 4) when referral is by an officer of a law-enforcement agency, a complete statement of all prior contacts with the child by officers of that law-enforcement agency.

The child's privilege against compelled self-incrimination does not preclude questions a child in detention about his or her background or any aspects of the case except the facts of the delinquent conduct or conduct indicating a need for supervision.

PRESUMPTION IN FAVOR OF RELEASE

53.02(a) – requires the Intake officer to release a child unless detention is required by one of the six circumstances enumerated in **53.02(b)** which are the following:

- 1) The child is likely to abscond or be removed from the jurisdiction of the court.
- 2) Suitable supervision, care, or protection for the child is not being provided.
- 3) There is no parent, guardian or custodian who can return the child to court.
- 4) The child may be dangerous to himself or others.
- 5) The child has been previously found to be delinquent.
- 6) The child is charged with a firearms offense. This is mandatory and Intake must contact a judge for authorization for any release prior to a detention hearing. Judicial authorization to release may be by phone.

Circumstances 1 through 5 are identical to those that control judicial release in detention hearings. Reasonable conditions of release can be attached to the release of a child.

(Fewer than 50% of referred juveniles are detained - Texas Juvenile Probation Commission – 2003.)

INTERROGATION

The Fifth Amendment to the U. S. Constitution and Texas law give the child the right not to answer questions that call for incriminating information. The child can refuse to answer any questions about the offense for which he or she was referred, or about any other offense. If the child is willing to talk about the offense, **51.095** makes any statements made inadmissible in court. Due to a myriad of potential problems, it is advisable that the Intake officer not questions the child about the offense even if the answers are restricted to making the intake detention decision.

INFORMATION AS TO IDENTITY

The child's right to remain silent does not include non-incriminating information such as his name and residence, her parents' names and residences, where the child attends school or may be working and other information that is of an identifying nature.

INFORMATION AS TO AGE

A child's age is a safe area for inquiry by the Intake officer and the officer can safely use the information in the detention/release decision.

PARENTAL NOTIFICATION 53.01(c)

Intake is required to give notice to parents when a child is referred in custody. In addition, in 2003 the legislature enacted Title 3: Chapter 61. Rights and Responsibilities of Parents and Other Eligible Persons. This title requires intake to notify parents of certain information when a child has been taken into custody.

Section 61.102 (a) provides the following:

The parent of a child referred to a juvenile court is entitled as soon as practicable after the referral to be informed by staff designated by the juvenile board, based on the information accompanying the referral to the juvenile court, of:

- 1) the date and time of the offense;
- 2) the date and time the child was taken into custody;
- 3) the name of the offense and its penal category;
- 4) the type of weapon, if any, that was used;
- 5) the type of property taken or damaged and the extent of damage, if any;
- 6) the physical injuries if any, to the victim of the offense;
- 7) whether there is reason to believe that the offense was gang-related;

- 8) whether there is reason to believe that the offense was related to consumption of alcohol or use of an illegal controlled substance;
- 9) if the child was taken into custody with adults or other juveniles, the names of those persons;
- 10) the aspects of the juvenile court process that apply to the child;
- 11) if the child is in detention, the visitation policy of the detention facility that applies to the child;
- 12) the child's right to be represented by an attorney and the local standards and procedures for determining whether the parent qualifies for appointment of counsel to represent the child; and
- 13) the methods by which the parent can assist the child with the legal process.

MENTAL HEALTH SCREENING

Human Resources Code Section 141.042(e) mandates the juvenile probation department use a mental health screening instrument selected by the Texas Juvenile Probation Commission. Section 141.042(g) protects the juvenile from misuse of information obtained from use of the screening instrument. Any statements made by a child and any mental health data obtained from the child during the administration of the mental health screening instrument under this section is not admissible against the child at any other hearing. The person administering the mental health screening instrument shall inform the child that any statement made by the child and any mental health data obtained from the child during the administration of the instrument is not admissible against the child at any other hearing.

ADVICE BY PROBATION OFFICER

The parents of a juvenile may ask a probation officer what action they should take on behalf of their child. Should they hire an attorney? Should they ask for a jury trial? The probation officer should NOT give the advice sought.

In *In re Brown*, 201 S. W. 3d 844 (Tex.Civ.App-Waco 1947, writ ref'd n.r.e.) the parents of a child complained on appeal that the probation office had advised them not to hire an attorney and not to ask for a jury trial. The probation officer denied he had given such advice. The court concluded the parents had not proven their claim, but made the following remarks about what a probation officer should do in such a circumstances:

It is the duty of the Probation Officer to guard and protect the rights of the child proceeded against, and he should never encourage or advise a child or those interested in its welfare not to employ counsel on a pretense that it might irritate the court, but he should, especially where the charge is a serious one, encourage rather than discourage the employment of counsel to take care of the rights of the child.

PROVIDING APPOINTMENT LIST TO PARENTS

Parents with means to employ counsel are frequently unaware of attorneys to employ as counsel in the representation of their child. In 2003, the legislature addressed this problem authorizing the juvenile board to make its appointment list available to the public. Section 51.10(j) provides:

The juvenile board of a county may make available to the public the list of attorneys eligible for appointment to represent children in proceedings under this title as provided in the plan adopted under Section 51.102. The list of attorneys must indicate the level of case for which each attorney is eligible for appointment under Sections 51.102(b)(2).

DUTY TO REPORT CHILD ABUSE

What if a child admits to a probation officer that he or she committed child abuse? Is the officer required to report that abuse by Section 261.101 or prohibited from doing so by Section 53.03©?

Section 261.101 TFC requires the juvenile probation officers and juvenile detention and correctional officers who have cause to believe that child abuse has occurred must within 48 hours report the abuse just like any other professional, including “teachers, nurses, doctors, day care employees.... This section makes it clear that the duty to report overrides the law’s usual privileges, including those for private communications to an “attorney, a member of the clergy, a medical practitioner, a social worker, a mental health professional...”.

Duty to Report Child Abuse, Neglect and Exploitation in a Juvenile Justice Facility or Program.

Juvenile probation officers, detention and correction officer also have the additional duty and must adhere to stricter timelines for reporting an outcry, allegation or suspicion of abuse, neglect or exploitation of a child that occurs in any juvenile probation department, juvenile justice program or juvenile facility. The timeline is a strict 24-hour reporting time gram as contained in the Texas Juvenile Probation Commission’s administrative rules. Title 37, Texas Administrative Code Chapter 341, 343, 347, 348, 349 and 351.

In addition, Section 261.405 TFC imposes an additional duty to submit “a report of alleged abuse, neglect, or exploitation in any juvenile justice program or facility...to the Texas Juvenile Probation Commission and a local law enforcement agency for investigation.”

DETENTION HEARING: SCHEDULING AND NOTICE

TIME LIMITS

54.01 - sets the requirement for detention hearings. If a child is not released administratively, Intake should automatically schedule a hearing.

54.01(a) – provides a detention hearing without a jury shall be held promptly, but not later than the second working day after the child is taken into custody. If a child is detained on a Friday or Saturday, then such detention hearing shall be held on the first working day after the child is taken into custody. If a detention hearing can be held sooner, it should be, since the law requires in any event, that it be held “promptly”.

If the child is detained in a county jail under the firearms statute, then a fast-track detention hearing must be scheduled.

54.01(p) – requires that a detention hearing **MUST** be held not later than 24 hours excluding weekends and holidays of when the child was taken into custody.

NOTICE TO PARENTS (Oral Notice)

54.01(b) – provides that “reasonable notice of the detention hearing, either oral or written, shall be given, stating the time, place and purpose of the hearing. Notice shall be given to the child and, if they can be found, to his parents, guardian or custodian.” Oral notice is authorized. It is not necessary that either the child or parents be served with a formal citation of a summons for a detention hearing. Notification should be attempted as soon as the hearing time is known.

FILING PETITION

53.04(a) – requires that the petition be filed “as promptly as practicable”, but does not require that a petition be filed before the detention hearing is held.

54.01(p)– gives the prosecutor 15 or 30 working days (depending upon the offense) after the initial detention hearing in which to file a petition when the child is detained. (Chapter 9) (Thirty days if offense is capital murder, first-degree felony or aggravated controlled substance felony; 15 days for all other offenses.)

DETENTION AND RELEASE CRITERIA

53.02(b) – criteria for detention and release by Intake

54.01(e) – criteria for detention or release by a judge or referee

These statutes are identical, except that **53.02(b)** prohibits Intake from releasing a firearms offender. The law creates a presumption that the child should be released. The sections provide that a child should be released unless one or more of five grounds for detention are found to exist:

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

DETENTION CRITERIA IN POST-18 YEAR OLD TRANSFER PROCEEDINGS

54.02(p) – authorizes the juvenile court to detain the person in the certified juvenile detention facility or in the county jail where bond can be set.

DETENTION PENDING RELEASE/TRANSFER HEARING

A juvenile court has the authority to detain a child referred to the court by the Texas Youth Commission for a release/transfer hearing under the determinate sentence act. The child may be placed in a certified place of juvenile secure detention or in the county jail without bond while the hearing is pending.

NO RIGHT TO BAIL

The Juvenile Justice Code does not recognize a right to bail, nor does it assert that such a right does not exist. It is silent on the subject.

CONDITIONS OF RELEASE

54.01(f) – provides that a release may be conditioned on requirements reasonably necessary to insure the child’s appearance at later proceedings, but the conditions of the release must be in writing and a copy furnished to the child. The range of conditions that can be imposed is limited only by the requirement that they be related to likelihood of appearance at trial.

53.02(a) - applies to release by Intake and contains an identical provision.

VIOLATION OF CONDITION OF RELEASE

If a child is released from detention on conditions and violates a condition, the release order may be revoked and the child taken back into custody on the original case.

52.015(a) – provides for law enforcement or a probation officer to make a request of a juvenile court to issue a directive to apprehend a child if the court finds there is probable cause to take the child into custody under the provisions of **54.01**.

ADULT AGREEMENT FOR INTAKE RELEASE

53.02(d) – requires an agreement from an adult to whom Intake has released a child, that the adult will be “subject to the jurisdiction of the juvenile court and to an order of contempt by the court if the adult, after notification, is unable to produce the child at later proceedings.”

DETENTION HEARING ORDERS REQUIRING PARENTAL COOPERATION

Under a new chapter in the Family Code on parental rights and responsibilities, the legislature in 2003, authorized a judge, referee, or detention magistrate, upon conditional release of a child from detention, to order “that the child’s parent, guardian, or custodian present in court at the detention hearing, engage in acts or omissions specified by the court, referee, or detention magistrate that will assist the child in complying with the conditions of release.” **54.01(r)** This order can be enforced by contempt.

RELEASD OF EXPELLED CHILD IN JJAEP COUNTY

53.02(e) and **54.01(f)** – require conditions of release to include referral to a JJAEP. In a county with a populace greater than 125,000, which is required to operate a Juvenile Justice Alternative Education Program, an Intake or judicial release of a child who was expelled, must include the condition that the child immediately attend the JJAEP program.

DETENTION OF STATUS OFFENDER IN ADULT FACILITY

4.011(a) – allows status offenders to be detained in an adult facility. If detained, the status offenders must have a hearing within 24 hours of arrival at the facility, excluding weekends and holidays.

NONOFFENDERS

51.02(8) - defines a nonoffender as a child who is subject to a court’s jurisdiction because the child is a victim of abuse, dependency or neglect or is a child who has been taken into custody and is being held solely for deportation out of the United States.”

54.011(a) - requires the judicial release of all nonoffenders within 24 hours, excluding weekends and holidays, of their arrival at the detention facility or at the 24-hour detention hearing. However, there is no federal or Texas prohibition on the placement of a nonoffender in a shelter or other non-secure facility.

CHILDREN HELD ON IMMIGRATION VIOLATIONS

53.01(a)(2)(B) – authorizes the temporary detention of a person who “is a nonoffender who has been taken into custody and is being held solely for deportation out of the United States”.

54.011(f) – requires all such nonoffenders be released from secure confinement at the 24-hour detention hearing required of all status offenders and nonoffenders. Civil and criminal penalties are provided for detaining a nonoffender in a secure facility beyond the 24-hour hearing.

Prohibited confinement of a nonoffender in a juvenile detention facility applies only to a secure detention facility as defined by **51.02(4)**.

THE 24-HOUR DETENTION HEARING

54.011(a) – requires a hearing for a status offender or a nonoffender to start “before the 24th hour after the time the child arrives at a detention facility, excluding hours of a weekend or a holiday.” Arrival is what triggers running the clock which is later than the event of the child being “taken into custody” for an ordinary detention hearing.

RETURN OF RUNAWAY

54.011(e) – allows for the detention of a status offender for a period not to exceed 5 days to arrange for return of a child to her home jurisdiction under the Interstate Compact Agreement.

54.01(i) through (k) - allows placement of a runaway child from another county, state or country to request shelter in the detention facility for up to 10 days.

<h2>JUVENILE COURT DESIGNATION OF PLACES OF DETENTION AND POLICE CUSTODY</h2>
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52.02(a)(3) – requires the juvenile board to designate the place or places of detention within its county. The designated places of detention must be certified as suitable for the detention of children.

52.025 – requires the juvenile board to designate juvenile processing offices, where police may take juveniles in their custody.

COUNTY OF DETENTION

51.12(e) – provides that a designated place of detention may be in another county in a facility that is certified.

54.01(m) – a required detention hearing may be held in the county of the designated place of detention where the child is being held even though that place may be outside the county of residence of the child or the county in which the alleged delinquent conduct may have occurred.

TRANSPORTING JUVENILES TO DETENTION FACILITIES

52.026(a) - requires the law enforcement officer who takes a child into custody to transport him to the designated juvenile detention facility.

52.026(b) – requires that if the designated juvenile detention facility is out of county, then the law enforcement officer taking the child into custody must transport the child to the out of county facility.

52.026(c) - includes transportation of the child to and from court as part of the responsibilities of the law enforcement officer taking the child into custody.

Alternatively, if authorized by the commissioners' court, the sheriff may be given this out-of-county transportation responsibility.

CERTIFYING PLACES OF DETENTION

51.12(c) - The Family Code fixes responsibility upon the juvenile court and the juvenile board to assure that the place designated as the juvenile detention facility is safe and suitable.

51.12(b) - The Family Code places ultimate responsibility on the juvenile court for controlling the conditions of detention of juveniles.

CONFINEMENT OF YOUTH AGES 17 TO 21

AG Opinion - The Attorney General was asked whether TYC youth between the ages of 18 and 21 could be detained in juvenile detention facilities. The AG concluded that a TYC youth who was arrested for, charged with or convicted of a criminal offense could be detained in a juvenile detention facility but only if not placed in the same compartment with a juvenile and only if not permitted to have regular contact with a juvenile.

If however, a TYC youth is not arrested for, charged with or convicted of a criminal offense, but perhaps is being held on a technical parole violation, then he or she can be detained in a juvenile detention facility the same as any juvenile.