Juvenile Law Section
STATE BAR OF TEXAS

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Visit us online at
www.juvenilelaw.org

NEWSLETTER EDITOR

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386th District Court
San Antonio, Texas

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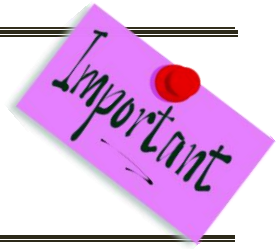
QUICK LINKS

Juvenile Law Section Website
Nuts and Bolts of Juvenile Law
State Bar of Texas Website
State Bar of Texas Annual Meeting
Texas Bar CLE
Texas Bar Circle
State Bar of Texas Facebook

Dear Juvenile Law Section Members:

Welcome to the e-newsletter published by the Juvenile Law Section of the State Bar of Texas. Your input is valued so please take a moment to email us and tell us what you think of the new format.



The "Review of Recent Cases" includes cases that are hyperlinked to Casemaker, a free service provided by TexasBarCLE. To access these opinions, you must be a registered user of the TexasBarCLE website, which requires creating a password and log-in. If you do not wish to receive emails from TexasBarCLE, you can opt-out of their email list.

TABLE OF CONTENTS

EDITOR'S FOREWORD By Associate Judge Pat Garza

It seems to be the new trend in elections. You look at some of the winners and ask, "Why?" and look at some of the losers and ask, "Why not?" As politics get more polarizing, voters tend to associate with their Party. And of course, vote that way. You know, the truth is, it's always been a toss-up when voters move down the ballot. The further down you were, the less voters voted. So, the single level voter would always give a boost to their party's candidates down the ballot. The farther down you went, the bigger the boost. I get it when it comes to legislative races, but judicial races? Come on? No office is expected to be less political that the office of Judge. You don't see blue or red when deciding a case. You don't check into a lawyer's affiliation or what party he gave the most money to. By definition, a judge is to be fair and impartial. It is sad that the winds of party politics can blow good judges off the bench. Don't get me wrong, there were a lot of good people elected to judicial races, but when every single person in a jurisdiction of a particular party wins, it has to give you pause. I know it's nothing new, and yes, the winds of party politics do change direction. It's just hard when you see friends and neighbors go through that kind of apprehension followed by the realization that there was probably nothing you or they could have done to change the outcome. Maybe that's why we have elections in November. Once they're over, everyone gets a chance to step back and take account. Jobs will come and go. But family is forever. Whether you are a politician or not, look around. You have plenty to be thankful for. Use this Thanksgiving to remind yourself that there's nothing more important than your family and friends. If change is in the cards, play them. Always move forward. Make the most of it! Focus on family, friends and most importantly, on yourself. Make this next year the best year ever. Have a Happy Thanksgiving and tell your family and friends how much you love them. Elections can't change that.

32nd Annual Robert Dawson Juvenile Law Institute. The Juvenile Law Section's 32nd Annual Juvenile Law Conference will be held February 24 thru February 27, 2019, at the Doubletree Hotel in Austin, Texas. This conference will also feature a nuts and bolts mini-conference on Sunday for anyone interested in learning more about juvenile law basics. There will be no extra cost associated with the mini-conference, but only those registered to attend the conference may attend the mini-conference and space will be limited on a first come, first-served basis.

Robert O. Dawson Visionary Leadership Award. The Juvenile Law Section is seeking nominations for the 2019 Robert O. Dawson Visionary Leadership Award. This award goes to an individual who has unselfishly devoted time to the cause of juvenile justice in Texas. Persons deserving nomination are those who advocate for justice for Texas' juveniles; those who promote legislation advancing the juvenile justice system in the state; and those who advance the development and/or expansion of juvenile justice programs, funding, and/or access to other innovative options or approaches designed to improve the state's juvenile justice system and benefit the youth it serves. Nominees may include employees of public, private, or non-profit organizations, elected or appointed officials, or private citizens. To nominate an individual for consideration, please submit the Robert O. Dawson Visionary Leadership Award Nomination Form found online at www.juvenilelaw.org.

Officer and Council Nominees. The Annual Juvenile Law Section meeting will be held in Austin, Texas, on Monday, February 25, 2019, in conjunction with the Juvenile Law Conference. The Juvenile Law Section's nominating committee will soon be submitting a slate of nominations for Council members for a term to expire 2022 and for Officers for the 2019-2020 term. While nominations from the floor will be taken during the meeting, we encourage you to submit nominations in advance. If you would like to nominate an individual for consideration, please contact the Chair of the Nominations Committee, Kameron Johnson, at 512-854-4128 or at Kameron.Johnson@traviscountytx.gov.

I can't change the direction of the wind, but I can adjust my sails to always reach my destination.

-Jimmy Dean

CHAIR'S MESSAGE By Kaci Singer

As we are all heading into the busy holiday season, I wanted to provide an update to you on the work of the Section this year.

- The Strategic Planning Committee met in October and is working on proposals to the Council of ways the Section can enhance services to its members, including ways that you would like for us to share information with you and the types of information you'd like to receive. If any of you have ideas, please feel free to share them with me at kaci.singer@tjjd.texas.gov or 512-790-7623.
- We are still seeking members who wish to serve on committees, particularly the Publications Committee to assist with forms. Contact me if you are interested in serving.
- We are currently seeking nominations for membership on the Council. Details are at www.juvenilelaw.org.
- We are currently seeking nominations for the 2019 Dawson Visionary Leadership award. Details and a nomination form are at www.juvenilelaw.org.
- Very soon, perhaps even by the time you receive this newsletter, registration for the 32nd Annual Robert O. Dawson Juvenile Law Conference will be open. This year's conference will be in Austin from February 24 – 27, 2019. In addition to a great line up of topics and speakers for the conference, we will again be having a Nuts and Bolts mini-course beginning at 1:00 p.m. on Sunday. This year's social events include a trivia night (Sunday) and a Casino Night with live band fundraiser for the Juvenile Law Foundation (Monday). We hope you will be able to join us to learn about juvenile law and to network and visit with other juvenile justice practitioners.

I hope everyone has a great holiday season and is able to spend time with family and friends and, hopefully, get some much-needed rest before the legislative session starts.

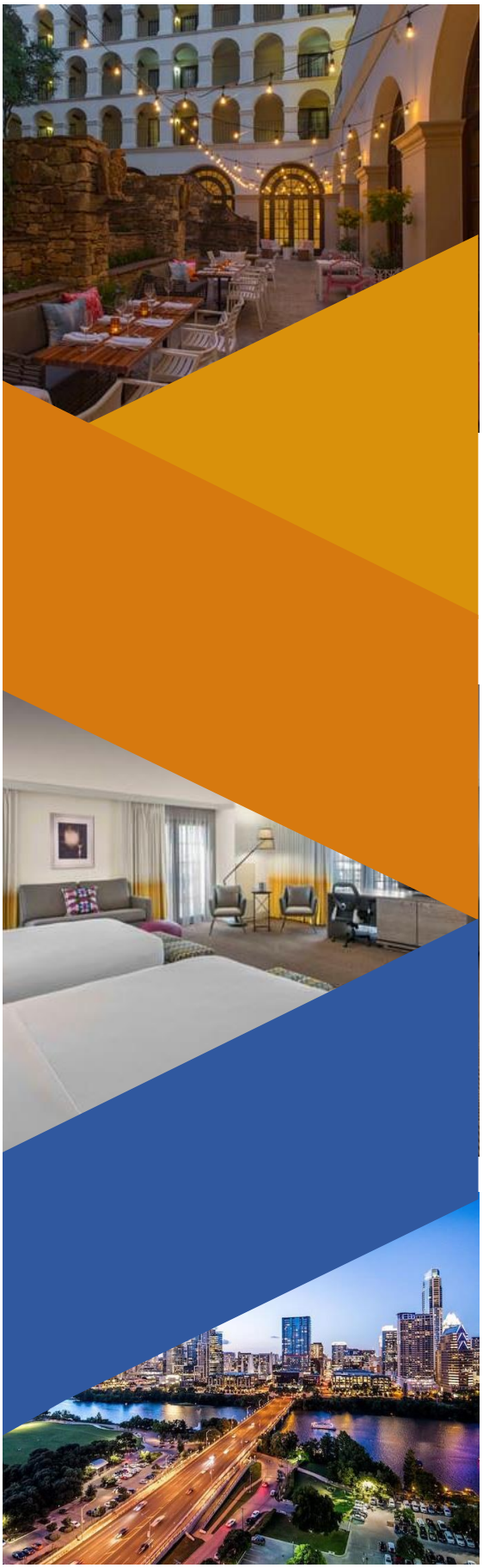
32nd Annual

Juvenile Law Conference

Robert O. Dawson Juvenile Law Institute

February 24-27, 2019

DoubleTree Hotel | Austin, Texas



IMPORTANT DATES

FEBRUARY 3
Last day to receive the discount hotel rate at DoubleTree.

FEBRUARY 10
Last day to register and pay to receive the early-bird discount. If you register or pay after this date, the onsite fee will apply.

FEBRUARY 10
Last day to cancel and receive a partial refund.

CONFERENCE, REGISTRATION, AND SOCIAL EVENTS AT A GLANCE

SUNDAY, FEBRUARY 24

10:30 am – 1:00 pm	Registration
1:00 pm – 5:00 pm	Nuts and Bolts Mini Course
7:30 pm	Trivia Night!

MONDAY, FEBRUARY 25

7:30 am – 4:30 pm	Registration
8:25 am – 4:30 pm	Conference
7:00 pm	Casino Night featuring live music by High Road

TUESDAY, FEBRUARY 26

8:00 am – 4:15 pm	Registration
8:30 am – 4:15 pm	Conference
4:15 pm	Section's Annual Meeting and Election of Officers

WEDNESDAY, FEBRUARY 27

8:15 am – 12:15 pm	Registration
8:30 am – 12:15 pm	Conference

CONFERENCE QUESTIONS AND CORRESPONDENCE

Juvenile Law Section
c/o Monique Mendoza
P.O. Box 12757
Austin, Texas 78711

Phone: 512.490.7913 | Fax: 512.490.7919
Email: Monique.Mendoza@tjjd.texas.gov

ATTENDEE SCHOLARSHIPS AVAILABLE

The Juvenile Law Section is offering scholarships for the conference registration fee to deserving attorneys actively engaged in the field of juvenile justice who demonstrate a financial need. To be considered for a scholarship, an applicant must submit a written request with the following information:

- Verification that the applicant is a licensed attorney;
- Verification that the applicant is a member of the Juvenile Law Section;
- Verification that the applicant did not receive a scholarship to the conference in the previous two years;
- An explanation of the applicant's involvement in the field of juvenile justice and how attendance at the conference will be beneficial to the applicant; and
- Demonstration of financial need.

A limited number of scholarships will be awarded, in the order received, to qualified applicants meeting all considerations above. The deadline to submit a request is Friday, February 1. Submit requests to Kameron Johnson at Kameron.Johnson@traviscountytx.org. Incomplete or late requests will not be considered. Granting of scholarship requests is not guaranteed. Notification regarding whether a scholarship has been awarded will be made to applicants by February 8.

These scholarships are limited to the conference registration fee only. Scholarship recipients are required to pay for their own travel arrangements and all other expenses related to participation in and attendance at the conference. Questions regarding the scholarships may be directed to Kameron Johnson at 512.854.4128.

PERSONS WITH DISABILITIES

Persons with disabilities who plan to attend the conference and who are in need of auxiliary aids or services should contact Monique Mendoza at 512.490.7913 at least seven (7) working days prior to the conference so that appropriate arrangements may be made.

CONTINUING EDUCATION CREDITS

The Juvenile Law Section has requested continuing education credits from the following agencies, organizations, or associations for 15.50 hours (including 3 hours of ethics): State Bar of Texas, Texas Center for the Judiciary, Texas Association of Counties, Texas Juvenile Justice Department, and Texas Commission on Law Enforcement. An additional 3.75 hours has been requested for the Nuts & Bolts Mini-Course.

As the conference approaches, you may contact Monique Mendoza at 512.490.7913 or check online at www.juvenilelaw.org to see how many hours have been approved.

ONLINE VIDEO ACCESS FREE TO ATTENDEES

Online videos of the presentations will be available to registrants 6-8 weeks after the conference on TexasBarCLE. **A VALID email address must be included when registering so the Bar may alert you when these benefits are available and provide information on how to access them.** (Note: presentation lengths may vary from times that were advertised.)

SOCIAL EVENTS

TRIVIA NIGHT! HOSTED BY GET IT GALS

Sponsored by the Juvenile Law Section | Sunday, February 24 at 7:30 pm

Join other conference attendees as we break into teams and compete in a live trivia competition.

Stay around after to socialize and network. There will be light snacks and a cash bar.

CASINO NIGHT WITH RAFFLE, FEATURING LIVE MUSIC BY HIGH ROAD

Sponsored by the Juvenile Law Foundation | Monday, February 25 at 7:00 pm

Join us for live music, Casino night with Raffle, snacks, photo booth, and Cash Bar. This is a Juvenile Law Foundation fundraising event.

The Juvenile Law Foundation is a 501(c)(3) non-profit organization that provides educational scholarships to individuals who have been involved as juveniles in the Texas juvenile justice system.

HOTEL ACCOMMODATIONS

DOUBLETREE BY HILTON AUSTIN

6505 Interstate 35 North
Austin, Texas 78752
Phone: 512.454.3737
www.austin.doubletree.com

Check-In is at 3:00 pm I Check-Out is at 11:00 am

RATES AND RESERVATIONS

The hotel is offering a discounted rate of $146 for a Standard and Double Room. The discounted room rate will be available Sunday night through Tuesday night and, based on availability, the two nights before and two nights after the conference.

The deadline to make reservations is **February 3, 2019**. Reservations made after this deadline will only be honored based on availability.

Make your reservations online at https://bit.ly/2RFRfLv. This is a customized website for attendees of the Juvenile Law Conference only; therefore, the rates listed should automatically be at the contracted rate. You may also contact the DoubleTree line directly at 800.866.3126. If you call to make reservations, please specify that you are with the Juvenile Law Section to ensure the special conference rate.

PARKING

The DoubleTree offers complimentary day use parking and a discounted rate of $5.00 for overnight parking. Valet parking is available for approximately $20.00 per day.

HOTEL SHUTTLE

The hotel is approximately 12.0 miles, or 20-25 minutes, from the airport. Conference participants flying in to Austin-Bergstrom International Airport will need to arrange ground transportation individually (shuttle service, cab, etc.). The hotel does not offer any courtesy transportation.

REGISTRATION FEES AND DEADLINES

	EARLY Registration **AND** Payment **RECEIVED BY FEB 10TH**	**LATE/ON-SITE** Registration **OR** Payment **RECEIVED AFTER FEB 10TH**
Discounted Registration Fee for members of the Juvenile Law Section, Juvenile Probation Officers, Judges, Associate Judges, Referees, and Masters	**$250**	**$325**
Registration Fee	**$275**	**$325**

- Conference fees are inclusive of attendance on any or all scheduled days. No special rate is available for partial attendance, students, or non-profit agencies.
- If you need clarification on whether or not you are a member of the Juvenile Law Section, please contact the State Bar of Texas Sections Division at 512.427.1420 or view your MyBarPage online at www.texasbar.com.
- Not a Juvenile Law Section member? If you are not a current member of the Juvenile Law Section, you may join here: https://juvenilelaw.org/hjk/ for $25 annually and get all the benefits of section membership, including the conference discount, quarterly newsletter, and legislative newsletter. Non-attorneys involved in the juvenile justice system are eligible to join the section. Law students and newly-licensed attorneys (two years or less) may join the Juvenile Law Section for free (in accordance with the State Bar of Texas rules), so join today with the SBOT to receive the discounted rate.
- NOTE: You cannot register for this conference through the State Bar or Texas Bar CLE.

HOW TO REGISTER

You may register online or offline at https://bit.ly/2PT71o9. If you need assistance with registering online, you may contact Monique Mendoza at 512.490.7913 or Monique.Mendoza@tjjd.texas.gov.

PAYMENT

Payment may be made by credit card or by check or money order made payable to JUVENILE LAW SECTION. No purchase orders or vouchers will be accepted. The Juvenile Law Section's Federal Tax ID is 74-6000148.

REGISTRATION FEE INCLUDES

The registration fee includes breakfast and breaks on Monday, Tuesday, and Wednesday, lunch on Monday, access to electronic materials, and attendance at the scheduled social events.

CONFIRMATION

You will receive an electronic confirmation that your registration was received. Please include a copy of your confirmation or a copy of your registration form if you mail in your payment.

MATERIALS EMAILED EARLY

Course material will be distributed in electronic format. If registration AND payment information is received by February 10, you will receive an email with a link to all materials received to date approximately one week prior to the conference. You may print the materials if you would like to bring a hard copy to the conference. No hard copies will be provided. The Section will have a limited number of electrical outlets for those wishing to bring a laptop or other mobile device.

CANCELLATIONS, REFUNDS, AND NO-SHOWS

Conference cancellations and refund requests must be made in writing to Monique Mendoza, Conference Coordinator, at Monique.Mendoza@tjjd.texas.gov.

Written cancellation requests must be received by February 10 for a partial refund (less a $25 processing fee). **Verbal cancellations will not be accepted.**

Refunds will not be granted for no-shows; however, course materials will be emailed the week before the conference.

SUBSTITUTIONS

Before the conference, you may submit a substitution request. Please contact Monique Mendoza at 512.490.7913 or Monique.Mendoza@tjjd.texas.gov and request that the substitution be made and the existing payment be transferred.

NOTE: Substitutions cannot be made for individual sessions and/or days.

REGISTRATION CHECK-IN

When you check-in, you may pick up your name badge and related conference information. The registration desk will be open Sunday from 12:00 pm – 5:00 pm and then again on Monday morning at 7:30 am. The conference kicks off at 8:25 am on Monday morning. Checking in on Sunday is not required.

SCHEDULE OF EVENTS

CONFERENCE:15.5 HOURS CLE; 3 HOURS ETHICS | NUTS AND BOLTS: 3.75 HOURS CLE

SUNDAY, FEBRUARY 24

1:00 - 5:00 pm Nuts & Bolts Mini Course

1:00 pm **Juvenile Law Basics 101**

Jenna Reblin and Kaci Singer, Staff Attorneys
Texas Juvenile Justice Department

1:30 pm **Before Adjudication: Custody, Detention, Deferred Prosecution, and Other Preliminaries**

John Gauntt, Jr., Assistant County Attorney
Bell County Attorney's Office, Belton, Texas

Patrick K. Gendron
Law Office of Patrick K. Gendron, Bryan, Texas

Judge Cyndi Porter Gore
Allen Municipal Court, Allen, Texas

2:15 pm **Break**

2:30 pm **Adjudication, Disposition, and Modification Hearings**

Terrance Windham
Law Office of Terrance Windham, Houston, Texas

3:30 pm **Determinate Sentencing and Transfer Hearings**

Jana Jones
Special Prosecution Unit

4:30 pm **Certifications**

Kameron Johnson, Chief Juvenile Public Defender
Travis County Juvenile Public Defender's Office

5:00 pm **Adjourn**

7:30 pm **Trivia Night hosted by Get It Gals**

Join other conference attendees as we break into teams and compete in a live trivia competition. Stay around after to socialize and network. There will be a cash bar.

MONDAY, FEBRUARY 25

6.75 HOURS

7:30 am **Breakfast** (provided)

8:25 am **Welcoming Remarks**

Honorable Michael Schneider, Course Director and Chair-Elect, Juvenile Law Section

8:30 am **High in Plain Sight: Current Alcohol, Drug, and Concealment Trends and Identifiers [2 hours CLE]**

Officer Jermaine Galloway
Tall Cop Says Stop

10:30 am **Break**

10:45 am **Myth and Reality: What Practitioners Need to Know about Adolescent Drug Use [1 hour CLE]**

Dr. Carl Hart, Ziff Professor of Psychology
(In Psychiatry)
Chair, Department of Psychology,
Columbia University, New York City

11:45 am **Working Lunch** (provided) **[.75 hour CLE]**

Judicial Caucus

Prosecutor and Law Enforcement Caucus

Defense Attorney Caucus

Probation and Agency Staff Caucus

1:15 pm **Spotlight on Diversion: Law Enforcement First Offender Programs [.5 hour CLE]**

Detective Rick Bentley
Irving Police Department Youth Investigations Division

1:45 pm **Spotlight on Diversion: Travis County Neighborhood Conference Committee [.5 hour CLE]**

Teresa Yrizarry, Program Manager
Travis County Health and Human Services

2:15 pm **Police Interactions with Juveniles: Arrests, Confessions, Waiver of Rights, & Search and Seizure [1 hour CLE]**

Honorable Pat Garza, Associate Judge
386th District Court, San Antonio, Texas

3:15 pm **Break**

3:30 pm **Juvenile Records: Confidentiality, Release, and Sealing [1 hour CLE]**

Kaci Singer, Senior Staff Attorney
Texas Juvenile Justice Department

4:30 pm **Adjourn**

7:00 pm **Casino Night featuring live music by High Road**
Join us for live music, snacks, and a Casino Night with raffle. This is a Juvenile Law Foundation fundraising event. The Juvenile Law Foundation is a 501(c)(3) non-profit organization that provides educational scholarships to individuals who have been involved as juveniles in the Texas juvenile justice system. Cash bar.

TUESDAY, FEBRUARY 26

5.5 HOURS CLE; 2 HOURS ETHICS

8:30 am **Fitness to Proceed and Lack of Responsibility: Chapter 55 Proceedings [1 hour CLE]**

Bill Cox, Division Chief
El Paso County Public Defender's Office

9:30 am **Considering the Victims: Rights, Statements, Restitution, and Ethical Issues [.75 hour CLE; 5 hours ethics]**

Jill Mata, General Counsel
Bexar County Juvenile Probation Department

10:15 am **Break**

10:30 am **Cultural Equity: Examining Racial and Ethnic Disparity in the Juvenile Justice System [1 hour CLE]**

Dan Gunter, Compliance and Accountability Officer
Texas Juvenile Justice Department

11:30 am **Lunch** (on your own)

1:15 pm **Crossover Programs: Juvenile and CPS [.75 hour CLE]**

Judge Darlene Byrne, 126th Judicial District Court, Travis County

Alison McGallion, Harris County Juvenile Probation Department

Kelly Opot, Harris County Children's Protection Services Crossover Program

Macon Stewart, Deputy Director, Multi-System Operations, Center for Juvenile Justice Reform, Georgetown University

2:00 pm **Using Risk Assessments at Critical Decision Points (Ethics) [1 hour CLE; 1 hour ethics]**

Daniel Hoard, Ph.D. and Katie Rose, Ph.D.
Travis County Juvenile Probation Department

3:00 pm **Break**

3:15 pm **The Intersection of Juvenile Law and Immigration [1 hour CLE; .5 hour ethics]**

Kate Lincoln-Goldfinch
Lincoln Goldfinch Law, Austin, Texas

Sandra Valdes, Refugee and Immigrant Center for Education and Legal Services, Austin, Texas

4:15 pm **Adjourn**

4:15 pm **Juvenile Law Section Annual Meeting and Election of Officers**

WEDNESDAY, FEBRUARY 27

3.25 HOURS; 1 HOUR ETHICS

8:30 am **TJJD: Trust Based Relational Intervention [.75 hour CLE]**

Shandra Carter, Deputy Executive Director of State Programs
Texas Juvenile Justice Department

9:15 am **Sexual Orientation and Gender Identity Expression (SOGIE) Issues in the Juvenile Justice System [.75 hour CLE]**

Brenda Risch, Ph.D., LMSW, Executive Director
Borderland Rainbow Center

10:00 am **Break** (additional time to check out)

10:30 am **Issues when the Juvenile is a Trafficking Victim (Ethics) [1 hour CLE; 1 hour ethics]**

Frank Adler, Law Office of Frank Adler
Arlington, Texas

11:30 am **New Developments in Sexual Behavior Issues [.75 hour CLE]**

Stephen A. Thorne, Ph.D.
Austin, Texas

12:15 pm **Adjourn**

PURPOSE AND SCOPE OF THE PERFORMANCE GUIDELINES. The Guidelines are intended to serve several purposes. First and foremost, the Guidelines seek to encourage attorneys who represent juveniles in delinquency proceedings to perform to a high standard of representation, and to promote professionalism among attorneys who represent juveniles in delinquency proceedings.

The Guidelines are intended to alert counsel to courses of action that may be necessary, advisable, or appropriate, and thereby to assist counsel in deciding upon the particular actions that must be taken in each case to provide the juvenile client the best representation possible. The Guidelines are also intended to provide a measure by which the performance of individual attorneys may be evaluated and to assist in training and supervising attorneys. Finally, the Guidelines are intended to encourage counsel to provide zealous representation even if there is a culture in counsel's jurisdiction of providing less than zealous representation.

The language of the Guidelines is general, implying flexibility of action appropriate to the particular situation at issue. Encouragement of attorneys' use of judgment in deciding upon a particular course of action is reflected by the phrases "should consider" and "when appropriate." When a particular course of action is appropriate in most circumstances, the Guidelines use the word "should." When a particular action is absolutely essential to providing quality representation, the Guidelines use the words "shall" or "must." In some instances, the Guidelines may call for a departure from local practices or may even seem to conflict with local procedures. In such cases, counsel should consult with lawyers, juvenile justice experts, ethics experts, and/or the commentary to the National Standards for guidance. If counsel determines that it is necessary to depart from a local practice in order to protect a client's rights, preserve error and/or meet his ethical obligation to the client, he must do so.

These Guidelines specifically apply to juvenile defense practice in Texas state court from the time of initial representation in trial-level proceedings—recognizing that the impact of these proceedings may extend far beyond the Texas juvenile justice system—to the exhaustion of direct review before the Texas Supreme Court. In any particular case, the Guidelines begin to apply at the time an attorney-client relationship is formed. The Guidelines require counsel to advise clients of their right to seek federal review in appropriate circumstances, but do not extend to representation of juveniles in federal court.

Guideline 1.1 General Obligations of Defense Counsel Representing Juveniles

A. The primary and most fundamental obligation of defense counsel is to provide competent, zealous, and diligent representation for the juvenile client throughout the entirety of the juvenile's contact with the juvenile justice system to protect and advance the juvenile's procedural and substantive rights. If personal matters make it impossible for counsel to fulfill the duty of zealous representation, counsel has a duty to refrain from representing the juvenile or to withdraw from representation if counsel has already entered an appearance in the case. Counsel's personal opinion of whether the juvenile committed the alleged offense or of the juvenile's need for rehabilitation is totally irrelevant. The juvenile's financial status is of no significance; indigent juveniles are entitled to the same zealous representation as juveniles whose families are capable of paying for an attorney.
B. Counsel's role in the juvenile court system is to fully elicit, protect, and advance the juvenile's expressed interest and protect the juvenile's procedural and substantive rights. Counsel may not substitute his own view of the juvenile's best interest for the expressed interest of the juvenile. Counsel represents only the interest of counsel's juvenile client. Counsel does not represent the interest of the juvenile's parents and counsel may not substitute the view of the juvenile's parents for the expressed interest of the juvenile. When counsel believes the juvenile's expressed interest will not achieve the best long-term outcome for the juvenile, counsel must provide juvenile with the necessary additional information for the juvenile to understand the potential outcomes and have the opportunity to fully consider his position. If the juvenile does not change his decision, counsel must continue to represent the juvenile's expressed interest.
C. Counsel also has an obligation to uphold the ethical standards of the State Bar of Texas and to act in accordance with the rules of the court.
D. Before agreeing to act as counsel or accepting appointment by a court in a particular matter, counsel has an obligation to confirm that counsel has available sufficient time, resources, knowledge, and the appropriate specialized experience necessary to offer quality representation to a juvenile in that matter. If it later appears that counsel is unable to offer quality representation in the case due to a large caseload or any other reason, counsel should inform the court and move to withdraw.

E. Counsel must consult with the juvenile and provide representation at the earliest stage possible, continuing until the case is disposed and the deadlines for filing a motion for new trial or appeal have passed. If appointed to represent a juvenile, counsel has a duty to continue representation until the case is terminated, the family retains an attorney, or the court appoints a new attorney to the juvenile's case. When appointed or retained to represent a juvenile client, counsel must make every reasonable effort to meet with the juvenile as soon as possible.
F. Counsel has the obligation to maintain regular contact with the juvenile and keep the juvenile informed of the progress of the case. Counsel should promptly comply with a juvenile's reasonable requests for information, and reply to client correspondence and telephone calls. If a youth is in custody, counsel must visit on a regular basis. If a youth is out of custody, counsel must arrange out of court, face-to-face meetings.
G. Upon initial contact, counsel should provide the juvenile with an explanation of the defender's role, the attorney-client privilege, and instructions not to talk to anyone about the facts of the case, including the juvenile's parents and siblings, without first consulting with counsel. Counsel should make it clear to the juvenile and to the juvenile's parents that the attorney-client protection does not extend to conversations that include the parents. Counsel should make clear to the juvenile and the juvenile's parents if present that he is the client and that Counsel does not represent the juvenile's parents/guardians and that being the client means that counsel will represent and advocate for what the juvenile says he wants.
H. Counsel should work to build a relationship with the client's parent or guardian, as appropriate, and communicate with the parent or guardian throughout counsel's representation of the client, as appropriate.
I. Counsel should appear timely for all scheduled court appearances in a client's case.
J. Counsel should spend appropriate time on each case regardless of whether counsel is appointed or retained. Counsel shall not provide preferential treatment to a retained client.
K. Counsel must be alert to, and advise the client of, all potential and actual conflicts of interest, such as if counsel has previously served as a prosecutor in proceedings against the client or a client's family member.
L. Counsel generally should not agree to represent co-respondents.
M. If a conflict develops during the course of representation, counsel has a duty to notify the juvenile and, generally, the court. Notice must be provided to the court without disclosing any confidential information. Counsel has a duty to eliminate the conflict, and if he is unable to do that counsel has a duty to withdraw from the representation.
N. Though allowed by Texas law, acting as both guardian ad litem and defense attorney to the same juvenile presents a significant risk of a conflict of interest, as the former must ethically represent the best interest of the child and the latter has an ethical obligation to represent a child's expressed interest. When it is impossible to simultaneously meet both ethical obligations, counsel should refuse to take on both roles. If counsel thinks that the child's best interest and express interest are in conflict, counsel should request the court to appoint a guardian ad litem.
O. Counsel has an obligation to keep and maintain a thorough, organized, and current file on each case.
P. If counsel withdraws from representation, counsel has an obligation to obtain the juvenile's permission before delivering all contents of the client's file, including all notes by counsel, to new counsel. Counsel shall timely respond to any reasonable request by new counsel regarding the case.

Guideline 1.2 Education, Training and Experience of Defense Counsel Representing Juveniles

A. Prior to undertaking the defense of a juvenile accused of delinquency, counsel should have sufficient experience to provide competent, zealous, and diligent representation for the case. To provide competent, zealous, and diligent representation to juveniles requires specialized training, preparation, and education in both criminal law and the unique representation of juvenile clients. Counsel must be familiar with the substantive criminal law, the evidentiary rules of criminal procedure, the juvenile delinquency provisions of the Texas Family Code, and civil procedure and its application in the particular jurisdiction, including changes and developments in the law. Counsel must maintain research capabilities necessary for presentation of relevant issues to the court.
B. Counsel must also be skilled and experienced in all aspects of defense specific to representing youth. Accordingly, counsel should participate in skills training and education programs in order to maintain and enhance skills. Counsel must be knowledgeable about adolescent development and other research that informs specific legal questions regarding the capacity of juveniles in legal proceedings, amenability to treatment, and culpability. Counsel should recognize when to consult experts. Counsel should be knowledgeable about the special status of youth in the legal system. Counsel should receive training regarding communicating with young clients in a manner that is developmentally appropriate and effective. Counsel should understand the consequences of juvenile adjudication and be familiar with the laws regulating child-serving institutions, including schools, social service providers, and mental health service providers.
C. Representation of juveniles in any case requires particular expertise, but representation of juveniles in unique circumstances or who face especially serious consequences requires even further expertise. Such cases include those of juveniles with mental health or competency concerns, a developmental disability, or a language impairment, as well as those cases in which the juvenile faces adult certification, a placement or probation sentence of more than one year, a determinate sentence, a life- long registration requirement, or immigration consequences. Counsel should accept such a case only after having had experience or training in less complex delinquency matters. When necessary, counsel should request the appointment of co-counsel.

D. If representing a juvenile with mental illness, a developmental disability, or a language impairment, counsel should become familiar with the symptoms of the juvenile's disability or impairment and those symptoms' potential impact on the juvenile's culpability in the case and potential use as a mitigating factor during disposition. Counsel should also be familiar with how the juvenile's illness may impact his communication with counsel and the attorney-client relationship. Counsel should also be familiar with the side effects of any medication the juvenile may be taking to treat the juvenile's mental impairment and the impact those side effects may have on the juvenile's culpability in the case or use as a mitigating factor during disposition.
E. Attorneys who represent juveniles who are at risk of being certified as an adult or are certified as adults should be familiar with the *Performance Guidelines for Non-Capital Criminal Defense Representation* adopted by the Texas State Bar Board of Directors in 2011.

Guideline 1.3 Additional Obligations of Counsel Representing a Foreign National

A. Counsel at every stage of the case should make appropriate efforts to determine whether any foreign country might consider the client to be one of its nationals.
B. Counsel representing a foreign national should:

1. Immediately determine if the client's ability to communication with counsel, in English, is sufficient to allow counsel and the client to adequately communicate. Counsel must recognize that some foreign nationals speak in dialects with which counsel may be unfamiliar, resulting in unintended miscommunication.
2. If there are any language conflicts, counsel should immediately request the court to appoint an appropriate interpreter to assist the defense in all stages of the proceeding, or counsel may request to withdraw due to language problems.
3. Advise the client of his or her right to communicate with the relevant consular office;
4. Consider whether it would benefit the client to contact the consular office. If counsel determines it could benefit the client, counsel should obtain the consent of the client to contact the consular office and inform it of the client's detention or arrest. Counsel who is unable to obtain consent should exercise his or her best professional judgment under the circumstances.

C. Counsel should never act as a language interpreter for the client at a court proceeding. If the client needs a language interpreter, counsel should request an appropriate interpreter from the court.

Guideline 2.1 General Obligations of Counsel Pretrial

A. When consistent with the juvenile's expressed interest, counsel has an obligation to attempt to secure the prompt release from pretrial detention of the juvenile under the conditions most favorable and least restrictive to the juvenile. Counsel should make every effort to make contact with the juvenile in pretrial detention and to conduct an interview for the purposes of developing a pretrial release plan. If counsel has time to conduct a full initial interview at this stage, he should do so. Refer to Guideline 3.1.
B. Counsel should be familiar with alternatives to detention and should present those alternatives to the court, as well as a pretrial release plan that complies with the juvenile's expressed interest.
C. Counsel shall arrange for a full initial interview with the juvenile as soon as practicable after being assigned to the juvenile's case and completing a juvenile's detention hearing. Refer to Guideline 3.1. When necessary, counsel may arrange for a designee to conduct this initial interview. If the initial interview is completed by a designee, counsel shall interview the juvenile personally at the earliest reasonable opportunity.
D. When representing a juvenile prior to his initial hearing, or in the pretrial period after a juvenile's initial detention hearing, counsel should insist on being present for any interview or questioning between the juvenile and law enforcement, state agents such as probation officers, and the Court to act as the juvenile's observer, record-keeper, and advocate.
E. When counsel represents the juvenile during a pre-adjudication probation interview, or has the opportunity to prepare the juvenile prior to the interview, counsel must warn the juvenile, using developmentally appropriate language, that anything the juvenile says to the probation officer will likely be shared with the court and may be used for several purposes. Counsel must similarly prepare the juvenile's parents and ask them to express their willingness to support the youth, which is a factor weighed in intake decisions and often reported to the judge. When possible and appropriate, counsel should make every effort to be present at the probation interview.

Guideline 2.2 Obligations of Counsel Regarding Detention Hearings

A. If a juvenile is detained, counsel must represent the juvenile at a detention hearing, to be held (at the latest) the second working day after the youth is detained, or the first working day after detention if the youth is detained on a Friday or Saturday. Counsel must be familiar with the factors that the State must demonstrate in order to continue to detain the youth. When appropriate and consistent with the client's expressed interest, counsel must attempt to secure the prompt release of the youth to the youth's family or another close, trusted adult or relative if possible.

B. Prior to the hearing, counsel should consult with the juvenile and, when appropriate, with the juvenile's parent. Counsel should conduct as much investigation as possible before the hearing to obtain material that can support a request for release. Counsel should review any detention risk assessments and be prepared to challenge the assessment findings if appropriate.
C. Prior to the hearing, counsel should reach out to the juvenile's family to explain the proceedings, as well as to gauge their ability to support any pretrial release of the juvenile, and to explain to the parents that they must be present at the detention hearing.
D. Prior to the hearing, when able, counsel should request all relevant material from probation.
E. Counsel must comply with any order from the court pursuant to the Texas Family Code prohibiting counsel from revealing particular items in the predisposition materials to the juvenile or his parent, guardian, or guardian ad litem.
F. After conferring with client and clients' parents, counsel should consider whether to request that detention proceedings be recorded. Counsel should consider the possibility of memorializing testimony with a potentially negative impact.
G. Counsel must be versed in state statutes, case law, detention risk assessment tools, and court practice regarding the use of detention and bail for young people. Counsel should be aware of and able to invoke research on the adverse impacts of detention on youth. Counsel should independently investigate the alternatives to secure detention and review these with the client and present to the court alternatives to detention and a pretrial release plan. Counsel should be familiar with and have visited the jurisdiction's detention facilities.
H. At the detention hearing, counsel should preserve the juvenile's rights by holding the state to its burden of establishing probable cause that the juvenile has engaged in delinquent conduct, conduct indicating a need for supervision, or conduct that violates an order of probation by the juvenile court and that the juvenile should remain detained because the applicable detention criteria has been met.
I. If the juvenile has any special medical, psychiatric, or security needs, counsel should use those needs to advocate for the juvenile's release. If counsel is unable to obtain pretrial release, and the juvenile remains detained, counsel should alert the court to any special medical, psychiatric, or security needs of the juvenile and request that the court direct the appropriate officials to take steps to meet such special needs. Counsel should consider making any communication to the court that is about a juvenile's special needs and is made outside of the detention hearing in an ex parte communication to the court to protect the client's confidentiality. Counsel should follow up with the juvenile regarding whether medications or treatments are being given in detention, and notify the court or relevant detention facility personnel if any problems arise.
J. If counsel is appointed after the juvenile's initial detention hearing, counsel should consider requesting a second detention hearing, which must take place within two days of the request.
K. Counsel should know the procedures for subsequent detention hearings, as well as any rules limiting the amount of time youth may be detained in pretrial placements.
L. If counsel is unable to do the appropriate investigation before the juvenile's detention hearing, counsel shall conduct that investigation as soon as possible after the hearing

Guideline 3.1 Initial Interview

The purpose of the initial interview is both to acquire information from the juvenile concerning pretrial release if the juvenile is detained, and also to provide the juvenile with information concerning the case, the pretrial process, and the charges and possible dispositions. Additionally, counsel should use this interview to begin establishing the trust and rapport necessary to form a good attorney-client relationship.

A. Preparation:

After being assigned to a case and prior to conducting the initial interview, counsel should:

1. Ensure the interview takes place in a private setting away from the juvenile's parents or any other person who is not a member of the defense team in order to demonstrate privacy and assure the juvenile that the communication is confidential;

2. Be familiar with the elements of the offense and the potential dispositions, if the charges against the client are already known;

3. Make an effort to obtain copies of any relevant documents that are available, including copies of any charging documents, recommendations, and reports made by pretrial services agencies concerning pretrial release, and law enforcement reports; and

4. If representing a client with mental illness, obtain reports from the detention center staff on the client's mental health status at the time of booking into the detention center and the client's current mental health status.

In addition, if the Client is detained, counsel should refer to Guidelines 2.1 and 2.2

B. The Interview

1. At this and all successive interviews and proceedings, counsel should make every effort to overcome barriers to communication, such as the juvenile's age and cognitive development, as well as differences in language or literacy, disability, or different cultural backgrounds. When appropriate, counsel should file a motion to have a foreign language or sign language interpreter appointed by the court and present at the initial interview. Counsel should use developmentally appropriate language and take the time necessary to be sure the juvenile client has understood any exchange. Counsel should use the meeting as an opportunity to build trust.
2. In addition, counsel should obtain from the client, and the client's parent/guardian if necessary, consent and all release forms necessary to obtain the client's medical, psychological, educational, and other records as may be pertinent to the juvenile's case.
3. In some jurisdictions, videoconferencing or teleconferencing is available for meeting with the client from a remote location rather than traveling to the detention center. However, videoconferencing or teleconferencing is not preferred for the initial interview and, because of the unique needs of juvenile clients and communications challenges posed as a consequence of their youth, should be used only as a last resort. Videoconferencing is never recommended for contact with juvenile clients who have a mental illness or developmental disability.
4. Information that counsel should acquire from the client during the interview includes, but is not limited to:

    a. The client's ties to the community, including length of time the client has lived at current and former residences, relationships with family, family history, education history and length of time at current school, any employment record and history, and immigration status if applicable;
    b. The client's physical and mental health, educational, employment, and social security/disability records;
    c. Any necessary information waivers or releases that will assist in the client's defense and preparation for disposition, including HIPAA (Health Insurance Portability and Accountability Act) compliant release in case medical records are required;
    d. The client's immediate medical needs;
    e. The client's prior arrests or delinquency findings, as well as any pending charges or outstanding probation terms;
    f. The ability of the client and the client's family to meet any conditions of pretrial release;
    g. The names and contact information for individuals who can verify the client's statements, and/or testify to the client's strengths, as well as permission from the client to make contact; and
    h. Any other information that will assist counsel in his representation, including preparation for investigation, subsequent detention hearings, adjudication, and disposition.

5. While obtaining the information specified in item 4 above during the initial interview is important to preparation of the defense, counsel should recognize that depending on the juvenile's maturity and mental state at the time of the initial interview, and the fact that they have not yet developed a trusting relationship, it may be difficult to obtain some of this information. Counsel will likely need to conduct more than one interview to gather this information. Counsel should obtain information from multiple sources.

C. Supplemental Information.

Whenever possible, counsel should use the initial interview to gather supplemental information, which should include, but is not limited to

1. The facts surrounding the client's arrest, including any photographs of excessive force or injury;
2. The client's understanding of, and initial response to, the allegations being made;
3. Any evidence of improper police investigative practices or prosecutorial conduct that affects the client's rights;
4. Any possible witnesses who should be located, including witnesses who may be relevant to detention, pretrial motions, fact, and disposition;
5. Any evidence that should be preserved; and
6. When appropriate, evidence of the client's competence to stand trial or mental state at the time of the offense

Guideline 3.2 Role of Counsel with respect to Youth Fitness to Proceed

A. Counsel must learn to recognize when a client's ability to participate in his own defense may be compromised due to developmental immaturity, mental health disorders, or developmental/intellectual disabilities.
B. Counsel must assess whether the client's level of functioning limits his ability to communicate effectively with counsel, as well as his ability to have a factual and rational understanding of the proceedings.
C. When counsel has reason to doubt the client's fitness to proceed, counsel must gather additional information and consider filing a pre-adjudication motion requesting a hearing for a determination of unfitness to proceed;
D. Counsel must be versed in the rules, statutes, and case law governing juvenile fitness to proceed.
E. Counsel must become familiar with experts qualified to assess fitness to proceed and learn the mechanisms for requesting a determination.
F. Counsel must learn the procedures for a hearing on the issue of fitness to proceed in his jurisdiction and fully comprehend the ramifications if the client is determined unfit to proceed.
G. Counsel must carefully weigh the consequences of moving forward with the case against the likely consequences of a finding of unfitness to proceed, and whether there are other ways to resolve the case, such as dismissal upon obtaining services for the client or referral to other agencies.
H. If counsel decides to proceed with a hearing on the issue of fitness to proceed, counsel must secure a qualified, independent expert to evaluate the client's competence. Counsel must then advise the client in developmentally appropriate language about the evaluation and proceedings, analyze the results of the evaluation, prepare the expert for testimony, and prepare his case substantively and procedurally for the hearing. Counsel must advise the client about the content of the hearing and assist the client in navigating the complexities of the proceedings.

Guideline 3.3 Role of Counsel with Respect to Certification Hearings

A. Counsel must know under what conditions prosecutors can seek to certify or transfer youth to adult court.
B. Counsel must, consistent with the client's expressed interest, try to prevent adult prosecution of the client.
C. Counsel must receive the certification report, including the diagnostic study, social evaluation, and other reports requested by the court prior to the certification hearing or request a continuance for time to receive and review the report.
D. Counsel must comply with any order from the court pursuant to the Texas Family Code prohibiting counsel from revealing particular items in the certification materials to the juvenile or his parent, guardian, or guardian ad litem.
E. If the prosecutor ultimately files a petition with the juvenile court to transfer the case to adult court, counsel must insist on a certification hearing and must insist that the hearing is recorded to protect the client's due process rights.
F. Counsel must seek to obtain and review any probation report developed prior to the certification hearing.
G. At the certification hearing, counsel must:

1. Present all facts, mitigating evidence, and testimony that may convince the court to keep the client in juvenile court, including the client's actual age, maturity, role in the alleged crime, any history of mental illness or trauma, and amenability to treatment, as well as the seriousness of the offense and the availability of youth-specific treatment options in juvenile court;
2. Consider the use of expert witnesses to raise the client's capacity to proceed in adult court, the client's amenability to rehabilitation in juvenile court, and any related developmental issues, and request that the court appoint such an expert;
3. Seek a determination of whether the prosecutor has probable cause to believe the juvenile committed the offense;
4. Challenge any defect in the charges that would deprive the adult court of jurisdiction;
5. Raise any credible facial or "as applied" state or federal challenges to adult prosecution;
6. Hold the state to its burden to demonstrate that certification is appropriate; and
7. Insist the court state a basis for its finding in a written order and that the court consider the statutory factors when making that determination.

H. In the case where the client is a person charged in juvenile court who is over 18 years old and the prosecution is seeking transfer to adult court for a crime alleged to have occurred before the client's 17th birthday, counsel must hold the prosecution to its burden to demonstrate that there was reason beyond the control of the state not to bring charges or complete the proceedings before the client's 18th birthday.

Guideline 3.4 Prosecution Requests for Non-Testimonial Evidence

Counsel should be familiar with and understand the law governing the prosecution's power to require a client to provide non-testimonial evidence, such as handwriting exemplars and physical specimens, the circumstances in which a client may

refuse to do so, the extent to which counsel may participate in the proceedings, and the record of the proceedings required to be maintained.

Guideline 4.1 Investigation

A. Counsel has a duty to conduct, or secure the resources to conduct, an independent case review and investigation as promptly as possible. Counsel should be familiar with laws and guidelines governing discovery. See Guideline 4.2. Counsel should, regardless of the client's wish to enter a plea of true, determine whether the charges are factually and legally correct and inform the client of potential defenses to the charges. Counsel should explore all avenues leading to facts relevant both to the adjudication and to the disposition in the event of a delinquency finding. In no case should counsel delay a disposition phase investigation based on the belief that the client will not be adjudicated delinquent or that the charges against the client will otherwise be dismissed.

B. Sources of review and investigative information should include the following:

1. *Allegation documents, statutes, and case law*
   The directive to apprehend, allegations, and offense report, along with any supporting documents used to establish probable cause, should be obtained and examined to determine the specific allegations that have been brought against the client. The relevant statutes and precedents should be examined to identify
   a. The elements of the offense with which the client is charged;
   b. The defenses, ordinary and affirmative, that may be available, as well as the proper manner and timeline for asserting any available defenses;
   c. Any lesser included offenses that may be available;
   d. Any defects in the charging documents, constitutional or otherwise, such as statute of limitations or double jeopardy; and
   e. Whether the allegations requires determinate disposition and the applicable disposition options for the particular allegations.
2. *The client*
   If not previously conducted, an in-depth interview of the client should be conducted as soon as possible and appropriate after appointment or retention of counsel. The interview with the client should be used to obtain information relevant to the client's social history as described above in Guideline 3.1. Information relevant to disposition also should be obtained from the client. To that end, counsel will usually need to conduct multiple interviews with the client.
3. *Potential Witnesses*
   Counsel should interview all potential witnesses, including any complaining witnesses, others adverse to the client, and witnesses favorable to the client. If counsel conducts interviews of potential witnesses adverse to the client, counsel should attempt to do so in the presence of an investigator or other third person in a manner that permits counsel to effectively impeach the witness with statements made during the interview.
4. *The police and prosecution*
   Counsel should utilize available discovery procedures to secure information related to the client's case in the possession of the prosecution or law enforcement authorities, including police reports
5. *The courts*
   Counsel should request and review any tapes or transcripts from previous hearings in the case. Counsel should also review the client's prior court file(s).
6. *Information in the possession of third parties*
   Counsel should seek a release or court order to obtain necessary confidential information about the client, co-respondent(s), witness(es), or victim(s) that is in the possession of third parties. Counsel should be aware of privacy laws and other requirements governing disclosure of the type of confidential information being sought.
7. *Physical Evidence*
   Counsel should make a prompt request to the police or investigative agency for any physical evidence or expert reports relevant to the offense or disposition, regardless of whether the prosecutor has tendered such reports, and should examine any such physical evidence. Upon completion of the inspection of the physical evidence, counsel should determine whether independent analysis or testing of the evidence is appropriate and, if so, seek the services of a qualified expert to complete such analysis or testing.
8. *The scene*
   Counsel or an investigator should view the scene of the alleged offense, making an effort to do so as soon as possible after counsel is appointed or retained. This should be done under circumstances as similar as possible to those existing at the time of the alleged incident (e.g., weather, time of day, lighting conditions, and seasonal changes). Counsel should consider the taking of photographs and the creation of diagrams or charts of the actual scene of the offense.
9. *Expert Assistance*
   Counsel should consider whether expert or investigative assistance, including consultation and testimony, is necessary or appropriate. Counsel should utilize ex parte and in camera procedures to secure the assistance of

Juvenile Law Section www.juvenilelaw.org Volume 32, Number 4

experts when it is necessary or appropriate to:

a. Prepare the defense;
b. Adequately understand the prosecution's case;
c. Rebut the prosecution's case or provide evidence to establish any available defense;
d. Investigate the client's fitness to proceed, mental state at the time of the offense, or capacity to make a knowing and intelligent waiver of constitutional rights; and
e. Mitigate any punishment that may be assessed after a verdict or plea of true to the alleged offense.

10. *Mental Health Records*
If representing a client with mental illness or a developmental disability, counsel should seek available mental health records (e.g., records of previous court cases in which mental health issues may have been raised; mental health treatment records, whether institutional or in the community; school records). Counsel should consider obtaining these records using a HIPAA (Health Insurance and Portability Act) release instead of a subpoena in order to maintain client confidentiality. Where an agency refuses to release protected or sensitive information without a subpoena, counsel should request the court to order the response to be submitted directly to counsel.

C. During case preparation and throughout adjudication, counsel should identify potential legal issues and the corresponding objections. Counsel should consider the tactics of when and how to raise those objections. Counsel also should consider how best to respond to objections that could be raised by the prosecution.

Guideline 4.2 Formal and Informal Discovery

A. Counsel has a duty to pursue formal discovery procedures provided by the rules of the jurisdiction and such informal discovery methods as may be available. Counsel should pursue formal and informal discovery as soon as practicable and to the extent reasonably necessary to zealously and effectively represent the client. Counsel should file a request for discovery in compliance with statutory discovery requirements as soon as practicable upon beginning representation of the client.
B. Counsel should seek discovery of the following items, if they exist;

1. Potential exculpatory information;
2. Potential mitigating information;
3. Potential favorable information;
4. The names and addresses of all prosecution witnesses, their prior statements, and criminal record, if any;
5. Any other information that may be used to impeach the testimony of prosecution witnesses;
6. All oral or written statements by the client, and the details of the circumstances under which the statements were made;
7. The prior juvenile record of the client and any evidence of other misconduct that the government may intend to use against the client;
8. Statements made by co-respondents;
9. Statements made by other potential witnesses;
10. All official reports by all law enforcement and other agencies involved in the case, e.g., police, school, arson, hospital, results of any scientific test(s);
11. All records of evidence collected and retained by law enforcement;
12. All video/audio recordings or photographs relevant to the case, as well as all recordings of transmissions by law enforcement officers, including radio and computer transmissions;
13. All books, papers, documents, tangible objects, buildings or places, or copies, descriptions, or other representations or portions thereof, relevant to the case;
14. All results or reports of relevant physical or mental examinations, and of scientific tests or experiments, or copies thereof;
15. All physical and forensic lab evidence in custody of law enforcement, including samples of evidence that has the potential to dissipate; and
16. A written summary of any expert testimony the prosecution intends to use in its case-in-chief at trial.

C. Counsel should seek prompt compliance with all formal discovery requests and sanctions for failure to comply.
D. Counsel should timely comply with all of the requirements governing disclosure of evidence by the client and notice of defenses and expert witnesses. Counsel should be aware of the possible sanctions for failure to comply with those requirements.

Guideline 4.3 Theory of the Case

During investigation and trial preparation, counsel should develop and continually reassess a theory of the case from which to organize the facts and legal basis of the defense, create a strategy, and determine subsequent actions. Similarly, counsel

should also develop strategies for advancing appropriate defenses and mitigating factors, including those related to mental health, on behalf of the client.

Guideline 5.1 Deciding Whether to File Pretrial Motions

A. Counsel must consider filing all appropriate pretrial motions whenever a good faith reason exists to believe that the client is entitled to relief that the court has discretion to grant. Counsel should consider whether pursuing a particular pretrial motion is necessary to protect the client's rights against later claims of waiver or procedural default. In making this decision, counsel should remember that a motion may have many objectives in addition to the ultimate relief requested by the motion. Counsel should thus consider whether:

1. The deadline for filing pretrial motions warrants filing a motion to preserve the client's rights, pending the results of further investigation;
2. Changes in the governing law might occur after the filing deadline that could enhance the likelihood that relief ought to be granted;
3. Later changes in the strategicand tactical posture of the defense case may occur that affect the significance of potential pretrial motions; and
4. Whether a pretrial motion is a good opportunity to introduce the court to issues, such as adolescent brain development, that impact a child's actions.

B. The decision to file pretrial motions should be made after thorough investigation, and after considering the applicable law in light of the circumstances of each case. Among the issuesthat counsel should consider addressing in a pretrial motion are:

1. The pretrial custody of the client and the filing of a motion to review conditions of release;
2. The competency of the client;
3. The constitutionality of the relevant statute or statutes;
4. Potential defects in the charging process;
5. The sufficiency of the charging document;
6. Severance of charges or respondents;
7. The discovery obligations of the prosecution;
8. The suppression of evidence gathered as the result of violations of the Fourth, Fifth, Sixth, or Fourteenth Amendments to the United States Constitution, or corresponding or additional state constitutional provisions and statutes, including:

    a. The fruits of illegal searches or seizures;
    b. Any statements that do not comply with the requirements of the Texas Family Code;
    c. Involuntary statements;
    d. Statements obtained unreliably or in violation of the client's right to counsel or privilege against self-incrimination; and
    e. Unreliable identification evidence that would give rise to a substantial likelihood of irreparable misidentification.

9. Change of venue;
10. Access to resources or experts that may be denied to the client because of the client's indigence;
11. The client's right to a speedy trial;
12. The client's right to a continuance in order to adequately prepare or present the client's case;
13. Matters of trial evidence that may be appropriately litigated by means of a pretrial motion; and
14. Matters of trial or courtroom procedure.

C. Counsel should request a full evidentiary hearing on any pretrial motion to preserve the issue adequately for appellate review, and must prepare for a motions hearing as he would for trial, including preparing the presentation of evidence and examination of witnesses.
D. Counsel should consider the advisability of filing a motion to disqualify or substitute the presiding judge. This consideration should include any information about the judge's history in aligning with the prosecution on motion rulings, any routine refusals of plea bargains, the client's experience with the judge, and any specific dislike of counsel, other defense counsel, or defense counsel in general. The decision to disqualify a judge shall only be made when it is a reasoned strategy decision and will benefit the client. The final decision rests with counsel.
E. Any motions that contain requests or agreements to continue a trial date should be discussed with the client and client's parent or guardian before they are made.
F. Motions and writs should include citations to applicable state and federal law in order to protect the record for

Juvenile Law Section www.juvenilelaw.org Volume 32, Number 4

collateral review in federal courts.

Guideline 5.2 Filing and Arguing Pretrial Motions

A. Counsel should file any and all appropriate pretrial motions. Motions should be filed in a timely manner in accordance with statute and local rule, should comport with the formal requirements of the court rules, and should succinctly inform the court of the authority relied upon. In filing a pretrial motion, counsel should be aware of the effect the filing might have upon the client's speedy trial rights.
B. Prior to any pretrial hearing at which the client is present, counsel must communicate to the client in developmentally appropriate language what is likely to happen before, during, and after the hearing. Counsel should provide the client with clear instructions about courtroom attire and conduct. Counsel should determine whether the proceedings should be public or private and request private proceedings if appropriate.
C. If a hearing on a motion requires the taking of evidence, counsel's preparation for the evidentiary hearing should include:

1. Investigation, discovery, and research relevant to the claim advanced;
2. The subpoenaing of all helpful evidence and the subpoenaing and preparation of all helpful witnesses;
3. Full understanding of the burdens of proof, evidentiary principles, and trial court procedures applicable to the hearing, including the benefits and potential consequences and costs of having the client testify;
4. The assistance of an expert witness when appropriate and necessary;
5. Familiarity with all applicable procedures for obtaining evidentiary hearings prior to trial; and
6. Preparation and submission of a memorandum of law when appropriate,

D. In every case that proceeds to adjudication, counsel should file timely and appropriate motions in limine to prohibit improper prosecutorial practices and to shield the jury or the judge from potentially improper evidence. Counsel should remain aware that the granting of a motion in limine alone will not preserve error on appeal.
E. Counsel should request that any pretrial hearing, argument, or ruling is on the record or in writing.
F. Counsel has a continuing duty to raise any issue that was not raised before adjudication, because the facts supporting the motion were not reasonably available at that time. Further, counsel shall be prepared, when appropriate, to renew a pretrial motion if new supporting information is disclosed in later proceedings.
G. When appropriate, counsel should file an interlocutory appeal from the denial of a pretrial motion.
H. When negotiating the entry of a plea of true, counsel should consider reserving the right to appeal the denial of a pretrial motion.

Guideline 6.1 The Plea Negotiation Process and the Duties of Counsel

A. The ultimate decision as to whether or not to accept a negotiated plea of true lies with the client.
B. Counsel should obtain the consent of the client before entering into any plea negotiation. Exploratory inquiries of the prosecution prior to obtaining client consent are permitted.
C. Prior to advising the client on whether to accept a plea agreement, counsel must have conducted appropriate investigation and completed an assessment of the strength of the state's case, as well as possible defenses, including an analysis of controlling law and the evidence likely to be introduced at trial. See Guideline 4.1.
D. After appropriate investigation and case review, counsel should explore with the client in developmentally appropriate language the possibility and desirability of pursuing a plea rather than proceeding to trial. Counsel should explain to the client those decisions that ultimately must be made by the client, as well as the advantages and disadvantages inherent in those choices. The decisions that must be made by the client after full consultation with counsel include whether to enter a plea of true or not true, whether to accept a plea agreement, and whether to testify at the plea hearing. Counsel should ensure the client understands all the consequences of a decision to accept a plea agreement and all the rights that decision waives. Counsel should also explain to the client the impact of the decision to enter a plea of true on the client's right to appeal. Counsel shall at all times render candid advice.
E. Counsel should keep the client fully informed of any continued plea discussions and negotiations and promptly convey to the client any offers made by the prosecution for a negotiated settlement. Counsel may not accept any plea agreement without the client's express authorization.
F. Counsel should explain to the client's parents any role they would play in a plea agreement and the subsequent disposition, while respecting the duty of confidentiality the attorney owes the juvenile.
G. The existence of ongoing tentative plea negotiations with the prosecution should not prevent counsel from taking steps necessary to prepare a defense.
H. Counsel should confirm that all conditions and promises comprising a plea agreement between the prosecution and defense are included in writing or in the transcript of the plea.
I. In developing a negotiation strategy, counsel should try to discern the position of any alleged victim with

respect to adjudication and disposition. In this regard, counsel should:

1. Consider whether interviewing the alleged victim or victims is appropriate and, if so, who is the best person to do so and under what circumstances;
2. Consider to what extent the alleged victim or victims might be involved in the plea negotiations;
3. Be familiar with any rights afforded the alleged victim or victims under the Victim's Rights Act or other applicable law, as well as limitations; and
4. Be familiar with the practice of the prosecutor or victim-witness advocate working with the prosecutor and to what extent, if any, the prosecution defers to the wishes of the alleged victim.

J. In conducting plea negotiations, counsel should be familiar with:

1. The various types of pleas that may be agreed to, including a plea of true;
2. The advantages and disadvantages of each available plea according to the circumstances of the case, including whether or not the client is mentally, physically, and financially capable of fulfilling requirements of the plea negotiated;
3. Whether the plea agreement is binding on the court and detention authorities;
4. Possibilities of pretrial diversion, deferred prosecution and specialty courts; and
5. Any recent changes in the applicable statutes or court rules and the effective dates of those changes.

Guideline 6.2 The Contents of the Negotiations

A. In conducting plea negotiations, counsel should become familiar with any practices and policies of the particular jurisdiction, judge, and prosecution that may impact the content and likely results of a negotiated plea agreement.
B. In order to develop an overall negotiation plan, counsel should be fully aware of, and review with the client in developmentally appropriate language, all short- and long-term consequences of accepting the plea, including:

1. Whether the charges carry the possibility of a determinate disposition and the length of any determinate disposition, as well as any fines or restitution that may be ordered;
2. The potential for recidivist disposition, including habitual offender statutes and disposition enhancements, and all other applicable disposition statutes or case law;
3. If a plea involving juvenile probation is under consideration, the permissible conditions of probation with which the client must comply in order to avoid probation modification;
4. Any registration requirements including sex offender registration and any collateral consequences of that registration;
5. The availability of appropriate diversion and rehabilitation programs;
6. The possible and likely place and manner of confinement;
7. Deportation and other possible immigration consequences that may result from the plea;
8. Other potential consequences of a delinquency finding including, but not limited to: consequences at the juvenile's school including suspension or expulsion, suspension of a motor vehicle operator's license, denial of federal student loan eligibility, conditions associated with a sex offense, enhancements in future adjudications in juvenile court or criminal prosecutions in adult court, and potential federal prosecutions;
9. The effect on appellate rights; and
10. That plea bargains are not binding on the court.

C. Counsel should proactively discuss with the client whether immigration consequences are a concern, investigate the immigration consequences of potential pleas, and request the court appoint an immigration expert to advise the client if appropriate.
D. In developing a negotiation strategy, counsel should be completely familiar with:
   1. Concessions that the defense might offer the prosecution as part of a negotiated settlement, including, but not limited to:

      a. Declining to assert or litigate any particular pretrial motions;
      b. Agreeing to fulfill specified restitution conditions or to participate in community work or service programs, or in rehabilitation or other programs;
      c. Providing the prosecution with assistance in prosecuting or investigating the present case or

Juvenile Law Section www.juvenilelaw.org Volume 32, Number 4

other alleged delinquent behavior; and
d. Foregoing appellate remedies.

2. Benefits the client might obtain from a negotiated settlement, including, but not limited to an agreement:

a. That the prosecution will not oppose the client's release from detention pending disposition or appeals;
b. That the client may enter a conditional plea to preserve the right to litigate and contest certain issues affecting the validity of an adjudication;
c. To dismiss or reduce one or more of the charged offenses either immediately, or upon completion of a deferred prosecution agreement;
d. That the client will not be subject to further investigation or prosecution for uncharged alleged delinquent conduct related to the case at hand;
e. That the client will receive, with the agreement of the court, a specified disposition or sanction or a disposition or sanction within a specified range;
f. That the prosecution will take, or refrain from taking, at the time of disposition or in communications with the preparer of the official predisposition report, a specified position with respect to the sanction to be imposed on the client by the court;
g. That the prosecution will not present, at the time of disposition or in communications with the preparer of the official predisposition report, information specified by counsel; and
h. That the client will receive, or the prosecution will recommend, specific benefits concerning the client's placement or manner of confinement or release and the information concerning the client's offense and alleged behavior that may be considered in determining the client's date of release from detention.

3. The client's and the client's parents' ability to comply with the court's conditions and the consequences of failing to do so.

E. Counsel should ensure that the client has sufficient time to fully consider any proposed plea.

Guideline 6.3 Counsel's Obligations to Client Considering a Plea Agreement

Counsel shall make it clear to the client in developmentally appropriate language that the client must make the ultimate decision of whether to enter a plea of true. Counsel should investigate and explain to the client in developmentally appropriate language the prospective strengths and weaknesses of the case for the prosecution and defense, including the availability of prosecution witnesses (if known), relevant concessions and benefits subject to negotiation, and possible consequences of a delinquency finding after adjudication. Counsel should not base a recommendation of a plea of true solely on the client's acknowledgement of committing an offense or solely on a favorable disposition offer. The decision to enter a plea of true rests solely with the client, and counsel should not attempt to unduly influence that decision. However, counsel should advise the client of the benefits and risks of each course of action. If the client's expressed interest as to the plea decision conflicts with counsel's belief, counsel shall nonetheless advocate for the client's expressed interest. Counsel should inform the client of any tentative negotiated agreement reached with the prosecution and explain to the client in developmentally appropriate language the full content of the agreement, as well as the advantages and disadvantages and potential direct and collateral consequences of the agreement. Counsel shall advise the client if the agreement carries a risk that the client will be deported and the extent of that risk if it is clear. Counsel shall ensure that client's acceptance of any plea is knowing, intelligent, and voluntary.

Guideline 6.4 Entering the Plea Agreement

A. Prior to entering the plea agreement, counsel must:
1. Advise the client in developmentally appropriate language that nothing heard by the judge regarding the plea can be heard in any other hearing in the case if the judge rejects the agreed plea;
2. Prepare the client for the role the client will play in the hearing, including answering questions from the judge and providing a statement concerning the offense;
3. If the plea is a non-negotiated plea, inform the client that once the plea has been accepted by the court, it may not be withdrawn after the disposition has been pronounced by the court; and

4. Advise the juvenile of his right to have the records sealed.

B. When entering the plea, counsel should confirm that the full content and conditions of the plea agreement are placed on the record before the court.
C. If, during the plea colloquy, it becomes clear to counsel that the client does not understand the proceedings, counsel must request a recess or a continuance to talk to the client.
D. After entry of the plea, counsel should be prepared to address the issue of release pending disposition if disposition is set for a different day. If the client has been released pending adjudication, counsel should be prepared to argue and persuade the court that the client's continued release is warranted and appropriate. If the client is in custody prior to the entry of the plea, counsel should, when practicable, advocate for and present to the court all reasons warranting the client's release pending disposition.
E. Subsequent to the acceptance of the plea, counsel should make every effort to review and explain the proceedings with the client in developmentally appropriate language and to respond to any client questions and concerns.

Guideline 7.1 General Preparation for Adjudication

A. Throughout preparation and adjudication, counsel should consider the theory of the defense and make decisions and act in a manner consistent with that theory.
B. The decision to seek to proceed with or without a jury during both the adjudication phase of the trial rests solely with the client after consultation with counsel. Counsel should discuss in developmentally appropriate language the strategic considerations relevant to this decision with the client, including the availability of different disposition options depending on whether disposition is assessed by a judge or jury. Counsel has an obligation to advise the court of the client's decision in a timely manner.
C. Counsel should have completed investigation, discovery, and research in advance of adjudication such that counsel is confident that the most viable defense theory has been fully developed, pursued, and refined. Refer to Guidelines 4.1 and 4.2.
D. Counsel should have prepared all potential witnesses prior to adjudication, and subpoenaed all necessary witnesses before adjudication, if appropriate.
E. When appropriate, counsel should prepare the following materials to be available at the time of trial:

1. Copies of all relevant documents filed in the case;
2. Relevant documents prepared by investigators;
3. Relevant documents provided by the prosecution;
4. Reports, test results, and other materials subject to disclosure;
5. Voir dire topics, plans, or questions;
6. An outline or draft of counsel's opening statement;
7. Cross-examination plans for all possible prosecution witnesses;
8. Direct examination plans for all prospective defense witnesses;
9. Copies of defense subpoenas and defense subpoena returns;
10. Prior statements of all prosecution witnesses (e.g., transcripts, police reports, investigator memos);
11. Prior statements of all defense witnesses;
12. Reports from defense experts;
13. A list of all defense exhibits, and the witnesses through whom they will be introduced;
14. Originals and copies of all documentary exhibits;
15. Proposed jury instructions, with supporting case citations if available;
16. A list of the evidence necessary to support defense requests for jury instructions;
17. Copies of all relevant statutes and cases; and
18. An outline or draft of counsel's closing argument, which will evolve over the course of the trial.

F. If counsel or the prosecution will seek to introduce an audio or video tape or a DVD of a police interview or of any other event, counsel should consider whether a transcript of the recording should be prepared and how the relevant portions of the recording will be reflected in the appellate record by stipulating those matters with the prosecution.
G. Counsel should be familiar with the rules of evidence, the law relating to all stages of the adjudication process, and any legal and evidentiary issues that can be reasonably anticipated to arise at adjudication.
H. Counsel should decide if it is beneficial to secure an advance ruling on evidentiary issues likely to arise during adjudication (e.g., use of prior adjudications to impeach the juvenile) and, when appropriate, counsel should prepare motions and memoranda for such advance rulings.

I. In preparing for cross-examination, counsel should be familiar with the applicable law and procedures concerning cross-examination and impeachment of witnesses. In order to develop material for impeachment or to discover documents subject to disclosure, counsel should be prepared to question witnesses as to the existence of prior statements that they may have made or adopted, and should consider doing so outside the presence of the jury

J. Counsel should be aware of the right to request a district judge in a county where the assigned judge is not elected and not an attorney, and enforce that right when appropriate.

K. Throughout the adjudication process, counsel should endeavor to establish a proper record for appellate review. To prepare, counsel must be familiar with the substantive and procedural law regarding the preservation of legal error for appellate review, and make a record sufficient to preserve appropriate and potentially meritorious legal issues for such appellate review unless there are strategic reasons for not doing so. As part of this effort, counsel should request, whenever necessary, that all trial proceedings, including voir dire, be recorded.

L. Prior to trial, counsel should fully explain the trial process, beginning with jury selection, to the client. Counsel should advise the client as to suitable courtroom dress and demeanor, making sure the client knows that the jury/judge will always be paying attention to his actions. If the client is detained, counsel should be alert to the possible prejudicial effects of the client appearing before the jury in detention facility clothing. When necessary, counsel should file pretrial motions seeking appropriate clothing for the client and that court personnel follow appropriate procedures so as not to reveal to jurors that the client is detained. Counsel should attempt to prevent the client from enduring any form of physical restraint, such as shackling, during the adjudication process.

M. Counsel should plan with the client the most convenient system for conferring throughout the trial. Counsel should supply the client with pen and paper to take and write notes during the trial. In instances where client is detained, counsel should seek a court order to have the client available for conferences.

N. If, during the trial, it appears to counsel that concessions to facts or offenses are strategically indicated, such concessions should be discussed with the client in developmentally appropriate language before they are made.

O. Counsel should be familiar with direct and collateral consequences of adjudication, including short- term and long-term consequences, such as:

1. The possible and likely place and manner of confinement;
2. Any possible consequences for clients involved in the child welfare system;
3. Any registration requirements, including sex offender registration, and any collateral consequences of that registration;
4. The possibility that an adjudication or admission of the offense could be used for cross- examination or advanced consequences in the event of future delinquency cases or criminal cases in adult court;
5. Deportation and other possible immigration consequences that may result from the adjudication; and
6. Other potential consequences of a delinquency finding including, but not limited to: consequences at the juvenile's school including suspension or expulsion; suspension of a motor vehicle operator's license; denial of federal student loan eligibility; conditions associated with a sex offense; use in future adjudications in juvenile court or possible enhancements in criminal prosecutions in adult court; and potential federal prosecutions.

Guideline 7.2 Voir Dire and Jury Selection

A. Preparation

1. Counsel should be familiar with the procedures by which both petit and grand jury venires are selected in the particular jurisdiction and should be alert to any potential legal challenges to the composition or selection of the venires.
2. Counsel should be familiar with local practices and the individual judge's procedures for selecting a jury from a panel of the venire, and should be alert to any potential legal challenges to those procedures. Counsel should be familiar with the law concerning voir dire inquiries so as to be able to defend any request to ask particular questions of prospective jurors.
3. Prior to jury selection, counsel should seek to obtain a prospective juror list and the standard jury questionnaire if feasible, and counsel should seek access to and retain the juror questionnaires that have been completed by potential jurors, as well as criminal history checks or other information relating to the prospective jurors in the State's possession. Counsel should also consider requesting use of a separate questionnaire that is tailored to the client's case and should determine the court's method for tracking

juror seating and selection.

4. Counsel should tailor voir dire questions to the specific case. If appropriate, counsel should develop and file in advance of trial written voir dire questions that counsel would like asked in open court. Among the purposes voir dire questions should be designed to serve are the following:

    a. To elicit information about the attitudes of individual jurors, which will inform counsel and client about peremptory strikes and challenges for cause;
    b. To determine jurors' attitudes toward legal principles that are critical to the defense, including, when appropriate, the client's decision not to testify;
    c. When permitted, to preview the case for the jurors so as to lessen the impact of damaging information that is likely to come to their attention during the trial;
    d. To present the client and the defense case in a favorable light, without prematurely disclosing information about the defense case to the prosecution; and
    e. To establish a relationship with the jury when the voir dire is conducted by counsel.

5. Counsel should be familiar with the law concerning challenges for cause, peremptory strikes, and requests for additional strikes. Counsel should also be aware of state and federal law concerning whether peremptory challenges need to be exhausted in order to preserve for appeal any challenges for cause that have been denied:
6. When appropriate, counsel should consider whether to seek expert assistance in the jury selection process.
7. Counsel should consider seeking assistance from a colleague or a defense team member to record venire panel responses and to observe venire panel reactions. Counsel should also communicate with the client regarding the client's venire panel preferences.

B. Examining the Prospective Jurors

1. Counsel should take all steps necessary to protect the voir dire record for appeal, including filing a copy of proposed voir dire questions not allowed by the court or reading such proposed questions into the record.
2. If the voir dire questions may elicit sensitive answers, counsel should consider requesting that questioning be conducted outside the presence of the remaining jurors.
3. In a group voir dire, counsel should avoid asking questions that may elicit responses that are likely to prejudice other prospective jurors or be prepared to examine such prejudices with the panel and address them appropriately.
4. Counsel should be familiar with case law regarding the client's right to be present during individual voir dire. Counsel should fully discuss the risks and benefits of waiving this right with the client. Where anything occurs outside of the client's presence, counsel should request the opportunity to explain what happened to the client.
5. Every part of jury selection should be on the record, including in-chambers discussions. Where something occurs outside of the record, counsel must put an account on the record at the earliest possible opportunity.

C. Challenges

1. Counsel should consider challenging for cause all persons about whom a legitimate argument can be made for actual prejudice or bias relevant to the case when it is likely to benefit the client.
2. If challenges for cause are not granted, counsel should consider exercising peremptory challenges to eliminate such jurors.
3. In exercising challenges for cause or peremptory strikes, counsel should consider both the panelists who may replace a person who is removed and the total number of peremptory challenges available.
4. Counsel should make every effort to consult with the client in exercising challenges.
5. Counsel should be alert to prosecutorial misuse of peremptory challenges and should seek appropriate remedial measures.
6. Counsel should object to and preserve all issues relating to the unconstitutional exclusion of jurors by the prosecution.
7. Counsel should make every effort to preserve error in voir dire by urging proper objection or instruction.

Juvenile Law Section www.juvenilelaw.org Volume 32, Number 4

Guideline 7.3 Opening Statements

A. Defense Counsel's Opening Statement

1. Prior to delivering an opening statement, counsel should ask for sequestration of witnesses, unless a strategic reason exists for not doing so.
2. Counsel should be familiar with the law of the jurisdiction and the individual trial judge's rules regarding the permissible content of an opening statement.
3. Counsel should consider the strategic advantages and disadvantages of disclosing particular information during the opening statement or, in special circumstances, of deferring the opening statement until the beginning of the defense case. Counsel's opening statement may also incorporate these objectives:

    a. To provide an overview of the defense case;
    b. To identify the weaknesses of the prosecution's case;
    c. To educate the judge and jury about the juvenile brain and developmental science if appropriate;
    d. To identify and emphasize the prosecution's burden of proof;
    e. To summarize the testimony of witnesses, and the role of each witness in relationship to the entire case;
    f. To describe the exhibits that will be introduced and the role of each exhibit in relationship to the entire case;
    g. To clarify the jurors' responsibilities;
    h. To establish counsel's credibility with the jury;
    i. To prepare the jury for the client's testimony or failure to testify; and
    j. To state the ultimate inferences that counsel wishes the jury to draw.

4. Counsel should record, and consider incorporating in the defense summation, promises of proof the prosecution makes to the jury during its opening statement.

B. Defense Counsel's Obligations During the Prosecution's Opening Statement

1. Whenever the prosecution oversteps the bounds of a proper opening statement, counsel should consider objecting, requesting a mistrial, or seeking a cautionary instruction unless tactical considerations weigh against any such objections or requests. Such tactical considerations may include, but are not limited to:

    a. The significance of the prosecution's error;
    b. The possibility that an objection might enhance the significance of the information in the jury's mind; and
    c. Whether there are any rules made by the judge against objecting during the other attorney's opening argument.

Guideline 7.4 Preparing to Confront and Confronting the Prosecution's Case

A. Counsel should research and be fully familiar with all of the elements of each charged offense and should attempt to anticipate weaknesses in the prosecution's case.
B. Counsel should anticipate weaknesses in the prosecution's proof and should research and consider preparing corresponding written motions for a directed verdict in advance of trial.
C. Counsel should consider the advantages and disadvantages of entering into stipulations concerning the prosecution's case.
D. In preparing for cross-examination, counsel should:

1. Integrate the cross-examination, the theory of the defense, and closing argument;
2. Consider whether cross-examination of each individual witness is likely to generate helpful information, and avoid asking unnecessary questions or questions that may hurt the defense case;
3. File a motion requesting the names and addresses of witnesses the prosecution might call in its case-in-chief or in rebuttal;
4. Formulate a cross-examination plan for each of the anticipated witnesses;
5. Have prepared a transcript of all audio or video tape-recorded statements made by witnesses;

6. Review all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;
7. Be alert to inconsistencies or variations in a witness's testimony;
8. Be alert to possible variations between different witnesses' testimony;
9. When appropriate, obtain and review laboratory credentials and protocols and other similar documents for possible use in cross-examining expert witnesses;
10. When appropriate, review relevant statutes and local police regulations for possible use in cross-examining police witnesses;
11. Be alert to issues relating to witness credibility, including bias and motive for testifying; and
12. Have prepared, for introduction into evidence, all documents that counsel intends to use during cross-examination, including certified copies of records such as prior convictions of witnesses and prior sworn testimony of witnesses.

E. Counsel should consider conducting a voir dire examination of potential prosecution witnesses who may not be competent to give particular testimony, including children or expert witnesses whom the prosecution may call. Counsel should be aware of the applicable law of the jurisdiction concerning competency of witnesses in general and admission of expert testimony in particular in order to be able to raise appropriate objections.
F. Prior to trial, counsel should ascertain whether the prosecution has provided copies of all prior statements of the witnesses it intends to call at trial. If disclosure is not timely made after the witness has testified, counsel should prepare and argue (a) motion(s) for:

1. Exclusion of the witness's testimony and all evidence affected by that testimony;
2. A mistrial;
3. Dismissal of the case;
4. Adequate time to review the documents or investigate and prepare further before commencing cross-examination, including a continuance or recess when necessary;
5. A cautionary instruction; or
6. Any other sanction counsel believes would remedy the violation.

G. If appropriate, at the close of the prosecution's case and out of the presence of the jury, counsel should move for an adjudication of not delinquent. Counsel should request, if necessary, that the court immediately rule on the motion, in order that counsel may make an informed decision about whether to present a defense case.

Guideline 7.5 Preparing and Presenting the Defense Case

A. Counsel should develop, in advance of trial and in consultation with the client, an overall defense strategy. Counsel should reassess the strategy after the state has closed its case.
B. Counsel should discuss with the client in developmentally appropriate language all of the considerations relevant to the client's decision to testify, including that the right to testify is the client's constitutional right. Counsel should also be familiar with the ethical responsibilities that may be applicable if the client insists on testifying untruthfully. Counsel should advise the client in developmentally appropriate language of the advantages and disadvantages of testifying, as well as the rules regarding testifying under oath and the possible consequences for speaking untruthfully while under oath. Counsel should maintain a record of the advice provided to the client and the client's decision concerning whether to testify. If the client does not follow counsel's advice, counsel should consider having the client acknowledge in writing the advice provided by counsel. The decision to testify rests solely with the client, and counsel should not attempt to unduly influence that decision. If the client does decide to testify, counsel must advise the client against making false statements and prepare the client for cross-examination by the state. Counsel must be aware of the laws regarding the admissibility of prior bad acts by juveniles
C. Counsel should be aware of the elements and tactical considerations of any affirmative defense and know whether, under the applicable law of the jurisdiction, the client bears a burden of persuasion or a burden of production.
D. In preparing for presentation of a defense case, counsel should do the following:

1. Consider all potential evidence that could corroborate the defense case, and the import of any evidence that is missing, and organize all evidence and witnesses selected for trial;
2. After thorough investigation and consultation with the client, make the decision of which witnesses to call;

3. Develop a plan for direct examination of each potential defense witness;
4. Determine the implications that the order of witnesses may have on the defense case;
5. Consider the possible use and careful preparation of character witnesses, along with the risks of rebuttal and wide-ranging cross-examination;
6. Consider the use of physical or demonstrative evidence and the witnesses necessary to admit it;
7. Determine what facts necessary for the defense case can be elicited through the cross-examination of the prosecution's witnesses;
8. Consider the need for expert witnesses and what evidence must be submitted to lay the foundation for the expert's testimony;
9. Review all documentary evidence that may be presented by the state;
10. Review all tangible evidence that may be presented by the state; and
11. Be fully familiar with statutory and case law on objections, motions to strike, offers of proof, and preserving the record on appeal.

F. In developing and presenting the defense case, counsel should consider the elements/areas of the defense case that may be susceptible to a rebuttal by the prosecution.
G. Counsel should prepare all defense witnesses for direct and cross-examination. Counsel shall advise all witnesses about the sequestration of witnesses, the purpose of that rule, and the consequences of disregarding it. Counsel should also advise witnesses of suitable courtroom dress and demeanor.
H. Counsel should systematically analyze all potential defense evidence for evidentiary problems. Counsel should research the law and prepare legal arguments in support of the admission of each piece of testimony or other evidence.
I. Counsel should conduct redirect examination as needed.
J. If an objection by the state to defense evidence or testimony is sustained, counsel should make appropriate efforts to re-phrase the question(s) and make an offer of proof.
K. Counsel should make objections to improper cross-examination by the prosecution.
L. Counsel should keep a record of all exhibits identified and/or admitted.
M. At the close of the defense case, counsel should renew the motion for judgment of acquittal on each charged count.

Guideline 7.6 Closing Arguments

A. Before argument, counsel should file and seek to obtain rulings on all requests for jury instructions in order to tailor or restrict the argument properly in compliance with the court's rulings.
B. Counsel should be familiar with the substantive limits on both prosecution and defense summation.
C. Counsel should be familiar with the local rules and the individual judge's practice concerning time limits and objections during closing argument, and provisions for rebuttal argument by the prosecution.
D. Counsel should develop closing prior to hearing but be prepared to adjust depending on development in the case or courtroom.
E. In developing closing argument, counsel should review the proceedings to determine what aspects can be used in support of defense summation and should consider:

1. Highlighting weaknesses in the prosecution's case;
2. Describing favorable inferences to be drawn from the evidence;
3. Incorporating into the argument:

    a. The theory and the theme(s) of the case;
    b. Helpful testimony from direct and cross-examination;

4. Verbatim instructions drawn from the jury charge;
5. Responses to anticipated prosecution arguments;
6. Visual aids and exhibits; and
7. The effects of the defense argument on the prosecution's rebuttal argument.

F. Counsel should consider incorporating into the closing argument a summation of the promises of proof the prosecution made to the jury during its opening.
G. Whenever the prosecution exceeds the scope of permissible argument, counsel should object, request a mistrial, or seek a cautionary instruction, unless tactical considerations suggest otherwise. Such tactical

considerations may include, but are not limited to:

1. Whether the argument is harmful (e.g., a fact that is not in evidence that is nevertheless fairly innocuous);
2. The need to preserve the objection for appellate review; and
3. The possibility that an objection might enhance the significance of the information in the jury's mind.

Guideline 7.6 Jury Instructions

A. Counsel should file proposed or requested jury instructions after the close of evidence and before closing argument.
B. Counsel should be familiar with the local rules and the individual judge's practices concerning ruling on proposed instructions, charging the jury, use of standard charges, and preserving objections to the instructions.
C. Counsel should always submit proposed jury instructions in writing.
D. When appropriate, counsel should submit modifications to the standard jury instructions in light of the particular circumstances of the case, including the desirability of seeking a verdict on a lesser included offense. Counsel should provide case law or other authority in support of the proposed instructions.
E. Counsel should object to and argue against improper instructions proposed by the prosecution.
F. If the court refuses to adopt instructions requested by counsel, or gives instructions over counsel's objection, counsel should take all steps necessary to preserve the record, including filing a copy of proposed instructions or reading proposed instructions into the record.
G. During delivery of the charge, counsel should be alert to any deviations from the judge's planned instructions, object to deviations unfavorable to the client, and, when necessary, request additional or curative instructions.
H. If the court proposes giving supplemental instructions to the jury, either upon request of the jurors or upon their failure to reach a verdict, counsel should request that the judge state the proposed charge to counsel before it is delivered to the jury. Counsel should renew or make new objections to any additional instructions given to the jurors after the jurors have begun their deliberations.
I. Counsel should reserve the right to make exceptions to the jury instructions above and beyond any specific objections that were made during the trial.
J. Counsel should move to discuss any jury notes or responses to jury notes regarding substantive matters in open court and on the record, and to include the actual notes and responses in the record for appellate purposes.

Guideline 8.1 Preparation for Disposition

Counsel should have prepared for disposition alongside his preparations for adjudication.

A. Counsel should be familiar with the disposition provisions of the Texas Family Code and the specific options available in the particular case, including:

    1. Whether there is a possibility of a determinate disposition.
    2. The potential for impact on future adjudications and dispositions within the juvenile justice system and disposition enhancements, as well as all other applicable disposition statutes or case law;
    3. If a disposition involving juvenile probation is possible, the permissible conditions of probation with which the client must comply in order to avoid probation modification;
    4. The availability of appropriate diversion and rehabilitation programs; and
    5. Applicable court costs.

B. In preparation for disposition, counsel should be aware of, and have visited, example potential out-of-home placement options, including group homes, foster care, residential programs, and treatment facilities.
C. Counsel should have obtained from the client and other sources any information or documentation, including affidavits, to support the client's disposition plan, as well as preparing witnesses to testify at the disposition hearing when appropriate.
D. Counsel should prepare the client for any interview conducted by the official preparing the predisposition report.
E. Counsel should discuss with the client, in developmentally appropriate terms, the array of options for

disposition and identify the client's preferences for disposition.

F. Counsel should consider the need for and availability of disposition specialists prior to disposition, and seek the assistance of such specialists whenever possible and appropriate.
G. Counsel should actively advise probation on their preparation of a disposition plan. If counsel finds that probation is not responsive, counsel should consider preparing a disposition plan separate from probation's plan.
H. Counsel must comply with any order from the court pursuant to the Texas Family Code prohibiting counsel from revealing particular items in the disposition materials to the juvenile or his parent, guardian, or guardian ad litem.
I. Counsel should be familiar with the procedures for disposition hearings, including the rules of evidence and burden of proof at such hearings, and the effect that plea negotiations may have upon the discretion of the court.
J. Counsel should inform the client of the client's right to speak at the disposition proceeding and assist the client in preparing the statement, if any, to be made to the court, making clear the possible consequences that any admission may have upon an appeal, subsequent retrial, or trial on other offenses.
K. Counsel should inform the client of the effects that admissions and other statements may have upon an appeal, retrial, or other judicial proceedings, such as forfeiture or restitution proceedings.
L. Counsel should maintain regular contact with the juvenile if the adjudication hearing and disposition hearing are set for different days.
M. Prior to disposition, counsel should confer with the client's parents, when appropriate, to explain the disposition process and to determine the parents' willingness to support the client's proposed disposition. Counsel must ensure parents know their role in the process.

Guideline 8.2 The Social History or Predisposition Report

Counsel should be familiar with the procedures concerning the preparation, submission, and verification of the social history report or similar document. In addition, counsel should:

A. Determine whether a social history report will be prepared and submitted to the court prior to disposition; if preparation of the report is optional, counsel should consider the strategic implications of requesting that a report be prepared;
B. Discuss the importance of the social history report with the client and prepare the client to participate;
C. Provide to the official preparing the report relevant information favorable to the client, including, when appropriate, the client's version of the offense, and supporting evidence;
D. Attend any interview of the client by an investigator;
E. Review the completed report and advise probation on any suggested changes prior to the disposition hearing;
F. Take appropriate steps to preserve and protect the client's interests, including requesting that a new report be prepared with the challenged or unproved information deleted before the report is distributed to correctional and probation officials, when the defense challenges information in the social history report as being erroneous or misleading and:

    1. The court refuses to hold a hearing on a disputed allegation adverse to the client;
    2. The prosecution fails to prove an allegation; or
    3. The court finds an allegation not proved.

G. Counsel should ensure that there is no error in the report that could result in a misclassification of a sanction level after disposition.
H. Counsel should request to see copies of the report to be distributed in order to verify that challenged information actually has been removed from the report.
I. If counsel attempts to work with probation to develop the social history report and finds that probation is unresponsive, and counsel feels that a separate disposition report is necessary, counsel should develop a defense disposition memorandum to distribute. Counsel should request his own expert to develop a defense predisposition report when appropriate. Among the items counsel should consider including in the memorandum are:

    1. Presentation of an individualized disposition proposal that takes into account the client's expressed interest;

2. Information favorable to the client concerning such matters as the offense, mitigating factors and relative culpability, prior offenses, personal background, any mental health concerns, extracurricular activities, social strengths, employment record and opportunities, educational background, and family and financial status;
3. Information concerning the availability and appropriateness of community-based treatment programs, community treatment facilities, and community service work opportunities;
4. Information that would support a disposition other than out-of-home placement, such as the potential for rehabilitation, the nonviolent nature of the offense, and the availability of the clients' parents to support the client through completing any terms of probation;
5. Challenges to incorrect or incomplete information in the official predisposition report or any prosecution disposition memorandum;
6. Challenges to improperly drawn inferences and inappropriate characterizations in the official predisposition report or any prosecution disposition memorandum; and
7. Information contrary to that before the court and that is supported by affidavits, letters, and public records.

Guideline 8.3 The Disposition Hearing

A. Counsel should be prepared at the disposition hearing to take the steps necessary to advocate fully for the requested disposition and to protect the client's interest.
B. Counsel should be familiar with the procedures available for obtaining an evidentiary hearing before the court in connection with the imposition of disposition.
C. Counsel must ensure that the facts the court considers in reaching its disposition decision are made part of the record, as well as counsel's objections to the disposition plan and any disputed findings of fact that serve as a basis for the court's decision.
D. Counsel must identify and preserve legal and constitutional issues for appeal.
E. When the state disputes or challenges information favorable to the client, counsel should be prepared to present supporting evidence, including testimony of witnesses, to establish the facts favorable to the client.
F. Counsel should request specific orders or recommendations from the court concerning the place of confinement, psychiatric treatment or drug rehabilitation, and against deportation/exclusion of the client.

Guideline 8.4 Obligations to Client Awaiting Placement

Counsel has continuing obligations to a client who is awaiting placement pursuant to a disposition order. Counsel should pursue efforts to keep the client in the least restrictive environment prior to placement if necessary, appropriate, and within the client's expressed interest.

Guideline 8.5 Sealing, Restriction, and/or Expunction of Record

After final disposition of the case, counsel should inform the client whether the client's records in the case will be automatically sealed or restricted. If the client's record will not be automatically sealed or restricted, counsel should inform the client of any procedures available for requesting that the client's records be sealed, restricted, and/or expunged and, if such procedures may be available in the client's case, when and under what conditions the client may pursue a sealing, restriction, or expunction. If appropriate, counsel should inform the client's family as well.

Guideline 9.1 Duties of Defense Counsel after Disposition

A. A client's right to counsel, and counsel's responsibilities to the client, do not terminate upon a finding of delinquency, or imposition of disposition.
B. Regardless of whether appointed or retained, and irrespective of the terms of any contract or legal services agreement, counsel must continue representation of the client until counsel has been formally granted permission to withdraw as counsel of record. Counsel shall continue to represent the client until the case has completed, including in motion for new trial proceedings when appropriate, or until new counsel has been appointed or retained.
C. If the client wishes to pursue post-adjudication remedies, counsel should do the following prior to seeking to withdraw as counsel for post-adjudication proceedings:

1. Notify the juvenile court in advance if the client will request appointed counsel and may require the immediate assistance of post-adjudication counsel; and
2. If arrangements have not been made for new counsel by the date of the verdict, assist the juvenile in filing a written notice of appeal and in requesting prompt appointment of post- adjudication counsel.

D. Counsel should not represent any client on appeal that counsel represented in the adjudication proceedings, unless new appellate counsel is not available.

Guideline 9.2 Education, Training, and Experience of Defense Counsel in Post-Adjudication Proceedings

To provide competent, quality representation in post-adjudication proceedings, counsel must possess the education, training, and experience specified in Guideline 1.2 and in addition be familiar with the Rules of Appellate Procedure and any local rules of the courts of appeal.

Guideline 9.3 Motion for a New Trial

A. Counsel should recognize that juvenile appeals, including motions for a new trial, are governed predominately by the rules that govern civil appeals. Counsel must be familiar with the timelines and rules that govern civil appeals.
B. Counsel should be familiar with the procedures applicable to a motion requesting a new trial, including:

1. The time period for filing such a motion;
2. The effect it has upon the time to file a notice of appeal;
3. The grounds that can be raised, which are differ somewhat from the grounds that can be raised on appeal in the criminal context;
4. The evidentiary rules applicable to hearings on motions for new trial, including the requirement that factual allegations in the motion, or affidavits in support of such factual allegations, must be sworn to;
5. The requirement that a motion for new trial be timely "presented" to the trial court in conformance with Rule of Appellate Procedure 21.6 in order to obtain a specific hearing date and preserve for appeal a claim that a request for a hearing was erroneously denied;
6. The time period for receiving a ruling on a motion for new trial, after which the motion is overruled by operation of law; and
7. The requirement that a trial court make written findings if a motion for new trial is granted.

C. If a finding of delinquency has been entered against the client after adjudication, counsel should consider whether it is appropriate to file a motion for a new trial with the trial court. In deciding whether to file such a motion, the factors counsel should consider include:

1. The likelihood of success of the motion, given the nature of the error or errors that can be raised;
2. The effect that such a motion might have upon the client's appellate rights, including whether the filing of such a motion is necessary to, or will assist in, preserving the client's right to raise on appeal the issues that might be raised in the new trial motion because of the opportunity to establish facts not in the trial record;
3. The effect filing a motion for new trial will have on the time period for perfecting an appeal;
4. Whether, after explaining to the client in developmentally appropriate language the client's right to submit a motion for new trial, the client desires that such a motion be filed; and
5. The effect filing a motion for new trial may have on the availability of other post-trial remedies.

D. The decision to file a motion for new trial should be made after considering the applicable law in light of the circumstances of each case. Among the issues that counsel should consider addressing in a motion for new trial are:

1. Denial of pre-trial motions;
2. Denial of the client's right to counsel or right to be present during trial;
3. Improper admission or exclusion of evidence;
4. A fundamentally defective jury charge;
5. Jury misconduct;
6. Intentional suppression by the State of witness testimony or other evidence tending to show the client's

innocence, preventing its production at trial;
7. Denial of a continuance based upon a critical missing witness or delayed discovery;
8. Sufficiency of the evidence; and
9. Any claim that would require a new trial in the interest of justice.

E. In the event that a motion for new trial is granted, counsel should be prepared to draft and timely file a reply brief in opposition to any appeal of that decision filed by the prosecution.

Guideline 9.4 Protecting Client's Right to Appeal

A. At the conclusion of each phase of the case, counsel must advise the client of the client's right to appeal the adjudication, disposition, and modifications of disposition decisions.
B. If the client expresses desire to appeal, counsel shall file a notice of appeal and inform the juvenile court whether counsel intends to represent the client on appeal.

Guideline 9.5 Duty to Facilitate Work of Successor Counsel

A. In accordance with professional norms, all persons who are or have been members of the defense team have a continuing duty to safeguard the interests of the client and should cooperate fully with successor counsel. This duty includes, but is not limited to:

1. Maintaining the records of the case in a manner that will inform the successor counsel of all significant developments relevant to the litigation;
2. With the client's permission, or if ordered by the court, providing the client's files, as well as information regarding all aspects of the representation to successor counsel;
3. Sharing potential further areas of legal and factual research with successor counsel; and
4. Cooperating with such professionally appropriate legal strategies as may be chosen by successor counsel.

B. After transferring the client's files to successor counsel, counsel should send a letter to the client advising the client of the file transfer.

Guideline 9.6 Direct Appeal

A. Counsel representing a client on direct appeal should be familiar with the procedures applicable to an appeal, including the rules specifying the time period for filing an appeal and the requirements for submission of the clerk's and reporter's records.
B. Counsel should, upon being contacted by the court or client concerning representation for an appeal, immediately consult with the trial court to ascertain relevant information concerning the perfection of the appeal and relevant filing deadlines, in order to confirm that counsel's acceptance of the case permits the maximum opportunity for proper representation.
C. When a client indicates a desire to appeal the judgment or disposition of the court, counsel has a duty to submit a notice of appeal on behalf of the client even if counsel does not want to represent the client on appeal.
D. New counsel should immediately contact trial counsel to obtain background information on the client and information on the nature of the issues presented, as well as to determine whether filing a motion for new trial, if available, is necessary to, or will assist in, preserving the client's right to raise on appeal the issues that might be raised in the new trial motion.
E. Retained counsel should, upon acceptance of appellate representation, immediately inform the court and the prosecution of the representation by filing the appropriate designation of counsel with the court, and all counsel, both retained and appointed, must submit the proper designations of the clerk's and reporter's records as mandated by the Texas Rules of Appellate Procedure.
F. Counsel should meet with the client as soon as possible after retention/appointment and well before filing the appellate brief.
G. Counsel must review the clerk's and reporter's records to determine whether they are true, correct, and complete in all respects. If errors or omissions are found, objections to the record must be immediately filed with the trial or appellate courts in order to obtain corrections or hearings necessary to protect the reliability of the record.
H. Counsel should fully review the appellate record for all reviewable errors, prepare a well-researched and

drafted appellate brief, file the brief in a timely manner and in accordance with all other requirements in the Texas Rules of Appellate Procedure and any local rules, and notify the court of counsel's desire to present oral argument in the case, when appropriate.

I. Counsel should consider preparing and filing a reply brief or a motion for rehearing if, under the circumstances, such is needed or required, particularly in order to make the court of appeals aware of legal or factual matters that may have been overlooked or mischaracterized or that may have newly developed.

Guideline 9.7 Right to File a Petition for Review

In the event that the intermediate appellate court's decision is unfavorable to the client, counsel must advise the client in person or by phone and in writing by hand delivery or certified mail of the court's decision and the client's right to file a petition for review and the action that must be taken to properly file such a petition. In advising the client of the right to file a petition for review, counsel should explain that:

A. Review by the Supreme Court of Texas is discretionary and not a matter of right, and that the Supreme Court of Texas may refuse to review the client's case without providing any reason for doing so;
B. If the client is indigent, the client does not have the right to appointed counsel for the purpose of filing a petition for review but that, upon request, counsel may be appointed for this purpose; and
C. If the client is indigent and if the petition for review is granted, the client does not have the right to court-appointed counsel for further proceedings on the merits before the Supreme Court of Texas, but that upon request, counsel may be appointed.

Guideline 9.8 Petition for Review

A. If an intermediate appellate court has issued a decision unfavorable to the client, counsel should advise the client of his right to file a petition for review with the Supreme Court of Texas and discuss with the client whether it may be appropriate to file such a petition in the client's case.
B. Counsel representing a client on a petition for review should be familiar with the procedures applicable to such a petition, including the rules specifying the time period for filing a petition; the organization of a petition; the page limits for a petition and the procedure for requesting an expansion of the petition for good cause; and appendices and copies required for filing a petition.
C. The decision to file a petition for review should be made after considering the applicable law in light of the circumstances of each case and the reasons for granting review specified in the Texas Rules of Appellate Procedure. Reasons for review that counsel should consider presenting in a petition for review include:

    1. Whether a court of appeals' decision conflicts with another court of appeals' decision on the same issue;
    2. Whether a court of appeals has decided an important question of state or federal law that has not been, but should be, settled by the Supreme Court of Texas;
    3. Whether a court of appeals has decided an important question of state or federal law in a way that conflicts with the applicable decisions of the Supreme Court of Texas or the United States Supreme Court;
    4. Whether a court of appeals has declared a statute, rule, regulation, or ordinance unconstitutional, or appears to have misconstrued a statute, rule, regulation, or ordinance;
    5. Whether the justices of a court of appeals have disagreed on a material question of law necessary to the court's decision; and
    6. Whether a court of appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of the Supreme Court of Texas's power of supervision.

D. In preparing a petition for review, counsel should fully review the appellate opinion for all reviewable errors, prepare a well-researched and drafted petition, file the petition in a timely manner and in accordance with all other requirements in the Rules of Appellate Procedure, and notify the court of counsel's desire to present oral argument in the case, when appropriate.
E. Should the Supreme Court of Texas request a brief on the merits, counsel should notify the client and prepare and timely file a brief on the merits in support of the grant of review.
F. Counsel should be prepared to draft and timely file a reply brief in opposition to any brief filed by the prosecution.
G. Counsel should be prepared to draft and timely file a motion for rehearing should the Supreme Court of

Texas deny relief after granting a petition for review and reviewing the case on the merits. Counsel should be prepared to timely defend against the prosecution's motion for rehearing should the court reverse the adjudication findings.

H. If the Supreme Court of Texas summarily denies a petition for review, counsel should be prepared to draft and timely file a motion for rehearing if, in conformance with Rule of Appellate Procedure 79.2, there are substantial intervening circumstances justifying further review.

Guideline 9.9 Right to File a Petition for Certiorari to the United States Supreme Court

A. In the event that the Supreme Court of Texas either summarily denies a petition for review or denies relief after reviewing the client's case on the merits, counsel should advise the client in writing by certified mail of the client's right to file a petition for certiorari before the United States Supreme Court and the action that must be taken to properly file such a petition, including the strict deadline. In informing the client of the right to file a petition for certiorari, counsel should explain that:

1. Review by the United States Supreme Court is discretionary and not a matter of right, and that the United States Supreme Court may refuse to review the client's case without providing any reason for doing so;
2. If the client is indigent, the client does not have the right to court-appointed counsel for the purpose of filing a petition for certiorari;
3. The date by which a petition must be filed; and
4. If the client is indigent and if the petition for certiorari is granted, the client may request the appointment of counsel for further proceedings on the merits before the United States Supreme Court.

B. Considerations relevant to filing a petition for certiorari may include but are not limited to:

1. The Supreme Court of Texas has decided an important question of federal law in a way that conflicts with the decision of another state court of last resort or federal court of appeals; or
2. The Supreme Court of Texas has decided an important question of federal law in a way that has not been, but should be settled by the United States Supreme Court, or has decided an important question of federal law in a way that conflicts with a decision of the United States Supreme Court.

Guideline 9.10 Role at Probation Modification Hearings

Counsel should receive notice and represent the client at probation modification or violation hearings.

A. Counsel should be proficient in applicable statutes regarding probation hearings, including the jurisdiction's standard of proof for a violation and the procedural requirements for revocation.
B. Counsel should investigate the client's alleged failure to abide by conditions of the probation order, including whether the probation officer and designated social service providers have met their obligations to the client, and advocate accordingly:

1. When counsel's investigation reveals that the client's probation officer, service providers, or family have not complied with the court's plan, counsel should either request that the court enforce its existing order or propose appropriate changes to the plan; and
2. When the basis of a client's probation violation is a new charge, counsel may consider asking the court to delay the hearing pending the outcome of the new case.

C. Counsel must offer mitigation evidence to explain the client's failure to abide by the probation contract.
D. Counsel must provide zealous representation at probation violation hearings, with the same duty of care, level of preparation, investigation, and adherence to the principles governing representation, as counsel would provide for any other proceeding.

REVIEW OF RECENT CASES

By Subject Matter

By Case

CRIMINAL PROCEEDINGS

IN INTERPRETING ARTICLE I, SECTION 11B OF THE TEXAS CONSTITUTION, "RELEASED ON BAIL PENDING TRIAL" IS THE SAME AS A "JUVENILE PREDELINQUENCY ADJUDICATION HEARING RELEASE," AND HAVING HIS "BAIL" REVOKED IS THE SAME AS "CUTTING OFF HIS ANKLE MONITOR AND FLEEING."

¶ 18-4-1. **Ex Parte McIntyre**, No. 02-18-00163-CR, No. 02-18-00164-CR, --- S.W.3d ----, 2018 WL 3968786 (Tex.App.—Fort Worth, 8/16/2018).

Facts: Appellant was sixteen years old when he allegedly committed these offenses. The capital murder case stems from a July 26, 2016 incident in which multiple suspects entered a house in Mansfield at 10:45 p.m., displayed their pistols, and demanded the occupants' cell phones and illegal drugs. During the robbery, the suspects fired their pistols, killing one of the occupants and wounding another. Appellant was identified as one of the suspects.

An arrest warrant issued for Appellant, and he was arrested and placed in the juvenile detention facility. After detention hearings, the juvenile court released Appellant pretrial to "home arrest" subject to conditions that included electronic monitoring via an ankle monitor. Despite signing the conditions of release and being informed that violations could result in the issuance of a directive to apprehend him and his subsequent arrest and detention, on March 27, 2017, Appellant cut off his monitor and fled.

Within a month of fleeing, Appellant became a suspect in—and has now been indicted for—a second capital murder in Bexar County. According to a Bexar County arrest warrant affidavit admitted into evidence at the writ hearing, Appellant and three others picked up a photographer for a photo shoot at a mall on April 23, 2017. The affidavit alleges that Appellant and one of the others pulled out guns and took the photographer's backpack containing his camera equipment. The other gun-bearing individual pistol-whipped the photographer and forced him from the car. The photographer attempted to get back into the car and eventually jumped on the hood. According to the affidavit, Appellant then leaned out of the window and shot the photographer, who died as a result of the gunshot.

A month after that incident, Appellant became a suspect in—and has now been indicted in—the May 25, 2017 Arlington aggravated robbery case. The details of that offense are not in the record before us.

Thus, Appellant has been indicted for two felony offenses—the Bexar County capital murder and the Arlington aggravated robbery—that were committed within two months of the date Appellant cut off his ankle monitor and fled. Approximately three months after Appellant cut off his ankle monitor and fled, on June 30, 2017, he was apprehended by the United States Marshals Service in Union County, New Jersey. He was returned to Tarrant County where he was incarcerated in the Tarrant County Jail on July 20, 2017. The juvenile court waived its jurisdiction and transferred Appellant's cases to the district court.

The State filed criminal complaints against Appellant in the capital murder case (noting bail was set in the amount of $500,000) and in the Arlington aggravated robbery case (noting "$0 bond"), and a Tarrant County grand jury returned indictments against Appellant in both cases on September 29, 2017. On February 7, 2018, the trial court sua sponte held the $500,000 bond previously set in the capital murder case to be insufficient and ordered that Appellant be held without bail in that case.

Appellant filed an application for a pretrial writ of habeas corpus in both cases1 arguing that he is being illegally restrained because he has been incarcerated since July 20, 2017, without the setting of reasonable bail. Appellant requested in his application that the trial court set reasonable bail in both the capital murder case and the Arlington aggravated robbery case. The trial court conducted a hearing.

At the hearing on Appellant's application for a pretrial writ of habeas corpus, evidence presented to the trial court established that after Appellant cut off his ankle monitor and fled, he wrote a song detailing his escapades. A New York lawyer represented Appellant in recording contract negotiations, and Appellant ultimately signed a three-year recording contract with 88 Classic for $600,000 or $700,000. Appellant also made a music video in which the trial court described Appellant as "pretty much bragging about the fact that he not only cut off his monitor ... but he's standing around holding a .9 mm pistol ... standing next to a poster of himself," which the trial court believed "came from the directive to apprehend."

Appellant's father and Appellant's uncle testified at the writ hearing. Appellant's father, Kevin Beverly, said that although he lived in McKinney, he had made arrangements to lease a home in Fort Worth so Appellant could live there with him if Appellant were released on bond. Beverly explained that Appellant's uncle had agreed to live with them if Appellant was released so that together they could provide continuous supervision of Appellant and make sure Appellant complied with all of the conditions of any bonds that are set. Beverly said that Appellant's recording contract was paying for his lawyers in Tarrant County and Bexar County and that as Appellant's legal guardian, he had transferred Appellant's assets to a trust.

Juvenile Law Section www.juvenilelaw.org Volume 32, Number 4

Appellant's uncle testified that he lived in Florida and that he had retired from the Army after suffering injuries during combat. Since retiring from the Army, Appellant's uncle had worked in security contracting (protecting embassies and consulates) and executive protection (providing security for mayors, senators, artists, and other similar professionals). Appellant's uncle testified that he was willing to move to Texas and live with Beverly. Appellant's uncle agreed that either he or Beverly would be in direct supervision of Appellant at all times and promised to make sure that Appellant observed every condition of any bonds that are set.

Defense counsel asked to provide additional information about the assets in Appellant's trust fund at a later date. The trial court agreed, and defense counsel provided that information at a subsequent, brief, on-the-record conclusion to the writ hearing. Defense counsel also requested that the trial court take judicial notice of Bexar County's placement of a juvenile hold on Appellant for the alleged capital murder of the photographer. According to defense counsel, even if the trial court set bail in Appellant's capital murder case and in his Arlington aggravated robbery case and even if Appellant posted bail, Appellant would not be released from custody but instead would be transported to Bexar County for a detention hearing in the juvenile court and possibly a hearing seeking a waiver of jurisdiction by the juvenile court and transfer of Appellant's case to a Bexar County district court for criminal prosecution. Only at that point, defense counsel argued, could Appellant seek bail in his Bexar County case and potentially be released.

The State offered, and the trial court admitted the arrest warrant for Appellant in the capital murder case and the Bexar County capital murder arrest warrant for Appellant. The State's sole witness was Luis Montoya. Montoya testified that the juvenile system does not have bonds and that Appellant has never been placed on a bond or bail. Montoya explained that Appellant's act of cutting off his monitor was a violation of his conditions of release and that the remedy for that violation was to issue a directive to apprehend.

The trial court made the following findings of fact and conclusions of law:
1. Applicant's date of birth is [redacted].
2. Applicant has been a runaway since July 4, 2014.
3. In Cause No. 1511547D, Applicant is accused in a four-count indictment alleging one count of capital murder and three counts of aggravated robbery.
4. In Cause No. 151157[4]D, Applicant is accused of one count of aggravated robbery and one count of aggravated assault.
5. Applicant previously removed his ankle monitor and fled while under house arrest as ordered by the juvenile court.
6. Applicant is alleged to have committed an additional capital murder and other felonious conduct after a directive to apprehend was issued following his absconding from house arrest by removing his ankle monitor.
7. According to the Noble Static Risk Assessment that was administered to Applicant, the classification reported for Applicant is "High Violent."
8. The nature of the alleged offenses and safety of the victim and community should be and has been considered on the issue of bond.

For all the reasons stated above and by the Court on the record during the hearing on March 8, 2018, the relief requested by Applicant should be denied[,] and no bail amount should be set. The trial court denied Appellant's application for a pretrial writ of habeas corpus ruling that "Applicant's requests for relief are DENIED[,] and no bail amount shall be set."

Held: Trial court's order denying bail in the capital murder case affirmed. Trial court's order denying bail in the Arlington aggravated robbery case reversed.

Opinion (per curiam): In the capital murder case, Appellant is charged with one count of capital murder and three counts of aggravated robbery for the events that occurred in Mansfield in July 2016. Appellant was placed in juvenile detention as a result of these offenses, was subsequently released on "house arrest," and was subject to conditions of release that included electronic monitoring via an ankle monitor. The State argues that Appellant's release from juvenile detention on the condition that he be electronically monitored twenty-four hours a day is equivalent to being "released on bail pending trial" for purposes of Texas constitution article I, section 11b's authorization of the denial of bail.

In support of this argument, the State's brief includes a helpful chart comparing juvenile predelinquency adjudication hearing release to adult pretrial bond release, which we have reformatted as follows:

Chart omitted.

The above comparison shows that juvenile predelinquency adjudication hearing release and adult pretrial bond release differ only in that (a) adult pretrial bond release typically includes security or money and (b) juvenile predelinquency adjudication hearing release may require an adult to agree to produce the child at later proceedings under penalty of an order of contempt. Compare Tex. Code Crim. Proc. Ann. art. 17.01, with Tex. Fam. Code Ann. § 53.02(d).

The State points out that the same major underlying purpose—assuring appearance at trial—is served by juvenile predelinquency adjudication hearing release and its conditions and adult pretrial bond release and its conditions. See, e.g., Tex. Fam. Code Ann. §§ 53.02(a), 54.01(f); Ex parte Rodriguez, 595 S.W.2d 549, 550 (Tex. Crim. App. [Panel Op.] 1980) (stating that

"[t]he primary purpose or object of an appearance bond is to secure the presence of a defendant in court for the trial of the offense charged"). Conditions of juvenile predelinquency adjudication hearing release serve the same purpose, apply similar requirements, and use similar punishments for violations as adult bail conditions. The State argues that the above-charted procedural consistencies and the identical purposes underlying juvenile predelinquency adjudication hearing release and adult pretrial bond release render violations of conditions of juvenile predelinquency adjudication hearing release congruent with and interchangeable with violations of adult pretrial bond release for purposes of triggering possible denial of bail under section 11b of the Texas constitution. We agree. No distinction exists between juvenile predelinquency adjudication hearing release and adult pretrial bond release for purposes of article I, section 11b of the Texas constitution; indeed, the Texas Court of Criminal Appeals has declined to draw such a distinction between adults and juveniles certified to stand trial as adults in a similar situation. See, e.g., Ex parte Green, 688 S.W.2d 555, 556–57 (Tex. Crim. App. 1985) (rejecting applying section 42.03 of the code of criminal procedure's credit-for-time-served provision differently to juvenile subsequently certified as an adult who had served time pretrial—even though juvenile was detained in juvenile detention facility, not jail—when juvenile was confined as a result of behavior which, if committed by an adult, would constitute a penal offense).4

A trial court may deny bail under Texas constitution article I, section 11b if a person (1) who is accused in Texas of a felony, (2) is released on bail pending trial, (3) has his bail subsequently revoked for a violation of a condition of release, and (4) is found to have violated conditions that relate to the safety of a victim or the safety of the community. Tex. Const. art. I, § 11b. In the capital murder case, Appellant is a person (1) who was accused in Tarrant County, Texas, of the felonies of capital murder and aggravated robbery; (2) was "released on bail pending trial" via his juvenile predelinquency adjudication hearing release; (3) had his "bail"/juvenile predelinquency adjudication hearing release subsequently revoked, as reflected by Appellant's continuous confinement since July 20, 2017, for violating a condition of his release—including cutting off his ankle monitor and fleeing; and (4) was specifically found by the trial court in finding of fact to have violated a condition that relates to the safety of the victims and of the community. For purposes of article I, section 11b of the Texas constitution, Appellant has effectively been "released on bail pending trial" in the capital murder case; Appellant violated the conditions of his release, fled, and allegedly committed multiple additional felonies demonstrating his danger to the community. We hold that the trial court did not abuse its discretion by denying Appellant's application for a pretrial writ of habeas corpus and by denying bail under article I, section 11b in the capital murder case. See id. See generally Ex parte Shires, 508 S.W.3d 856, 865 (Tex. App.—Fort Worth 2016, no pet.) (looking at the legislative history of section 11b and stating that "the legislature recognized that when an accused has demonstrated a reluctance to abide by reasonable conditions of bond, considerations of the safety of victims … and the safety of the community as a whole should be considered before releasing the defendant into the community again").

We overrule the portion of Appellant's sole issue challenging the denial of his application for a pretrial writ of habeas corpus seeking bail in the capital murder case.

The Arlington Aggravated Robbery Case

Because Appellant's juvenile predelinquency adjudication hearing release was based on the capital murder case, not the Arlington aggravated robbery case, Texas constitution article I, section 11b does not support the trial court's decision to deny bail in the Arlington aggravated robbery case. That is, Appellant was never granted juvenile predelinquency adjudication hearing release in the Arlington aggravated robbery case, so he cannot be denied bail based on a violation of conditions of release that were never imposed.

The State argues that "extraordinary circumstances" exist authorizing the trial court to deny bail in the Arlington aggravated robbery case. The State candidly acknowledges, however, that this bail exception has been very rarely utilized—only in one case. We decline to apply the "extraordinary circumstances" exception here, if in fact such an exception still exists. We hold that the trial court abused its discretion by denying Appellant's application for a pretrial writ of habeas corpus seeking reasonable bail in the Arlington aggravated robbery case. See, e.g., Tex. Const. art. I, § 11 ("All prisoners shall be bailable ...."); Tex. Code Crim. Proc. Ann. art. 1.07 (using similar language); Ex parte Davis, 574 S.W.2d 166, 168 (Tex. Crim. App. [Panel Op.] 1978) ("The general rule favors the allowance of bail."); Gutierrez v. State, 927 S.W.2d 783, 784 (Tex. App.—Houston [14th Dist.] 1996, no pet.) (holding that appellant was entitled to pretrial bail under the Texas constitution because none of the constitutional exceptions to bail applied).

We sustain the portion of Appellant's sole issue challenging the denial of his application for a pretrial writ of habeas corpus seeking reasonable bail in the Arlington aggravated robbery case.

Conclusion: Having overruled the portion of Appellant's sole issue challenging the trial court's denial of bail in the capital murder case, we affirm the trial court's order denying Appellant's application for a pretrial writ of habeas corpus in that case. Having sustained the portion of Appellant's sole issue challenging the trial court's denial of bail in the Arlington aggravated robbery case, we reverse the trial court denial of Appellant's application for a pretrial writ of habeas corpus in that case and remand that case to

the trial court for further proceedings consistent with this opinion. See Tex. R. App. P. 43.2(d); Gutierrez, 927 S.W.2d at 784 (remanding case to trial court to set bail when appellate court held appellant was entitled to have bail set).

JUVENILE MISTAKENLY INDICTED BY GRAND JURY WAS NOT ENTITLED TO HAVE HIS RECORD EXPUNGED BECAUSE MISTAKE OF AGE DOES NOT CALL INTO QUESTION THE EXISTENCE OF PROBABLE CAUSE BUT INSTEAD RELATES TO THE STATE'S ABILITY TO MEET ITS EVIDENTIARY BURDEN OF PROVING THE ELEMENTS OF THE OFFENSE, INCLUDING AGE.

¶ 18-4-6. **In the Matter of the Expunction of V.H.B.**, --- S.W.3d ----, 2018 WL 4660101, 2018 WL 4660101 (Tex.App.—El Paso, 9/28/2018).

Facts: V.H.B. was charged by indictment for the offense of continuous sexual assault of a child. TEX.PEN.CODE ANN. § 21.02 (West Supp. 2017). At the time of indictment, Section 21.02(b) provided that a person commits the offense of continuous sexual assault of a child if: (1) during a period that is 30 or more days in duration, the person commits two or more acts of sexual abuse, regardless of whether the acts of sexual abuse are committed against one or more victims; and (2) at the time of the commission of each of the acts of sexual abuse, the actor is 17 years of age or older and the victim is a child younger than 14 years of age. TEX.PEN.CODE ANN. § 21.02 (West Supp. 2017).

The indictment in this case alleged that V.H.B. committed the offense of continuous sexual abuse of a child by four manner and means occurring during a period that was more than 30 days in duration, specifically on or about the dates of February 1, 2008, and December 30, 2010, when V.H.B. was 17 years of age or older. After the jury was empaneled, the State's prosecutor moved to dismiss the indictment against V.H.B. for the reason that the "Detective made an error on defendant's birthday." The trial court ordered the case dismissed for this reason. The State sought to have V.H.B. adjudicated a delinquent child in a juvenile court or, alternatively, certified for trial as an adult and to have his case transferred to a criminal court. Finding that the State's petition to waive juvenile court jurisdiction and to transfer the case to criminal court was filed when V.H.B. was 21 years old, the trial judge presiding over the juvenile case dismissed the case for want of jurisdiction. See TEX.FAM.CODE ANN. §§ 51.0412, 54.02(j)(4)(A), (B)(West 2014).

Thereafter, V.H.B. filed in the trial court a petition for expunction. At the expunction hearing, V.H.B. testified that he was born on January 29, 1992.3 Consequently, V.H.B. was only 16 years old on February 1, 2008, the first date of the period alleged in the indictment. After considering the evidence and testimony and hearing arguments of counsel, the trial court denied the petition for expunction.

At V.H.B.'s request, the trial court issued findings of fact and conclusions of law. Although we need not recite all of the trial court's findings of fact, we note that regarding V.H.B.'s age, the trial court found that V.H.B. was born on January 29, 1992, was sixteen years of age, a juvenile, during a portion of the alleged time of commission of the predicate acts alleged in the indictment (February 1, 2008 to December 30, 2010),4 and was 17 years old on January 29, 2009, for purposes of prosecution as an adult under Texas law. The trial court also found, "[t]he indictment was not void" and "was not 'dismissed because the presentment had been made because of mistake, false information, or other similar reason indicating absence of probable cause at the time of dismissal to believe the person committed the offense or because the indictment was void[,]' " that V.H.B.'s "age or error thereof has no bearing on whether there was probable cause to believe that an offense or offenses were committed during the said duration of time as alleged in the indictment, and that the error regarding V.H.B.'s age "is no evidence of mistake, false information, or other similar reason indicating absence of probable cause to believe that [V.H.B.] committed the offense." Regarding V.H.B.'s burden of proof, the trial court found that V.H.B. had failed to satisfy his burdens of proving that "he was a juvenile during the entire duration of time of commission of the alleged criminal acts set out in the indictment thereby divesting the District Court of jurisdiction (without proper adult certification) and rendering the indictment void," and "was unlawfully arrested or indicted for the said offense(s) and hence entitled to expunction of the said criminal records." Also finding that no applicable statute of limitations exists for the indicted or predicate acts alleged, and that V.H.B. remains subject to prosecution as an adult, the trial court then concluded as a matter of law that V.H.B. had failed to meet his burden of proving he was "entitled to expunction of criminal records under Tex. Code. Crim. Proc. Ann. Art. 55.01(a)(2)(2016)."

Held: Affirmed

Opinion: V.H.B. specifically sought expunction under Article 55.01(a)(2)(A)(ii). See TEX.CODE CRIM.PROC.ANN. art. 55.01(a)(2)(A)(ii)(West 2018). Article 55.01(a)(2)(A)(ii)(c) provides in part that a person who has been placed under a custodial or non-custodial arrest for commission of a felony is entitled to have all records and files relating to the arrest expunged if the indictment was dismissed and the trial court finds that the indictment was dismissed because the presentment had been made because of mistake, false information, or other similar reason indicating absence of probable cause at the time of the dismissal to believe the person committed the offense. TEX.CODE CRIM.PROC.ANN. art. 55.01(a)(2)(A)(ii)(c).

To be entitled to expunction under the pleadings and facts of this case, V.H.B was required to establish that: (1) he had been released and the charge, if any, had not resulted in a final conviction and was no longer pending; (2) there was no court-ordered community supervision under Article 42.12 for the offense; (3) an indictment or information charging him with the commission of any felony offense arising out the same transaction for which he was arrested, if presented, was dismissed or quashed; and (4) the trial court found that the indictment or information was dismissed or quashed because of mistake, false information, or some other reason indicating absence of probable cause at the time of the dismissal to believe he committed the offense.5 [Emphasis added]. See TEX.CODE CRIM.PROC.ANN. art. 55.01(a)(2)(A)(ii). In his sole issue, V.H.B. challenges the trial court's findings related to the fourth element and its denial of the petition for expunction.

The issue we address is whether V.H.B. presented legally sufficient evidence to prove that the indictment was dismissed because presentment of the indictment had been made because of mistake, false information, or some other reason indicating absence of probable cause at the time of the dismissal to believe V.H.B. could be found guilty of the offense. See TEX.CODE CRIM.PROC.ANN. art. 55.01(a)(2)(A)(ii). To prove this statutory element, V.H.B. relied on his own testimony as well as the State's express reason for seeking dismissal of the indictment as set forth in its motion to dismiss the indictment.

To be entitled to an expunction under Article 55.01(a)(2)(A)(ii), the petitioner is required to prove that the indictment was dismissed because a mistake, false information, or other similar reason caused the presentment of the indictment. See TEX.CODE CRIM.PROC.ANN. art. 55.01(a)(2)(A)(ii). The statute requires proof that the original presentment of the indictment was made because of mistake, false information, or other reason that would, at the time of the dismissal, indicate a lack of probable cause to believe the person committed the offense. T.L.B., Jr. v. Texas Dep't of Pub. Safety, 03-10-00196-CV, 2011 WL 182889, at *3 (Tex.App.--Austin Jan. 20, 2011, no pet.). The statute requires both that mistake, false information, or similar reason cause the presentment and that the fact of wrongful or mistaken presentment cause the dismissal. State v. Sink, 685 S.W.2d 403, 405 (Tex.App.--Dallas 1985, no writ); see also In Matter of Expunction of A.M., 511 S.W.3d at 596; Kendall v. State, 997 S.W.2d 630, 632 (Tex.App.--Dallas 1998, pet. denied) (finding that presentment had been made because of false information or mistake requires proof that grand jury based its decision to indict on erroneous facts.). Restated, it must be shown that but for the reason for dismissal, the indictment would not have been presented. Sink, 685 S.W.2d at 405.

The dismissal of an indictment due to insufficient evidence to obtain a conviction cannot be the basis of an expunction because it is not evidence that presentment of the indictment was made because of mistake, false information, or other similar reason indicating absence of probable cause at the time of the dismissal to believe that the defendant committed the offense. See In re C.V., 214 S.W.3d 43, 45 (Tex.App.--El Paso 2006, no pet.); Barker v. State, 84 S.W.3d 409, 413 (Tex.App.--Fort Worth 2002, no pet.). When examining the reason for the dismissal, the expunction court may look beyond the reasons given by the prosecutor. See Harris County District Attorney's Office v. Hopson, 880 S.W.2d 1, 4 (Tex.App.--Houston [14th Dist.] 1994, no pet.).

V.H.B. contends the trial court abused its discretion when it denied his petition for expunction because he was not 17 years of age or older "during all of the times alleged in the indictment." He asserts that the State dismissed the indictment because the prosecutor realized that the presentment to the grand jury had been made on the basis of a mistake or false information about V.H.B.'s age, and he could not be guilty of the offense alleged in the indictment. V.H.B. argues that the grand jury would not have indicted him had it known his true age, since it would have lacked probable cause to believe that he was at or above the age of 17 during the alleged period as required by Section 21.02 of the Penal Code. TEX.PEN.CODE ANN. § 21.02. We disagree.

It is undisputed that the State's motion to dismiss is founded on the detective's mistake regarding V.H.B.'s birthdate. Unlike some, that mistake does not call into question whether V.H.B. was the person who committed the offense. See In re C.V., 214 S.W.3d at 45. Nonetheless, the grand jurors did not have the benefit of V.H.B.'s actual age when they made their decision to indict him. We are mindful, however, of no less than two matters. We first observe that V.H.B. was age 17 and older during almost two years portion of the approximately three-year period alleged in the indictment and as represented to the grand jury. Second, we acknowledge that while the State must provide the defendant with notice of the time period in which the continuous sexual abuse is alleged to have occurred, it is not necessary for the State to allege the exact dates on which the predicate acts of sexual abuse occurred, as those dates are not essential to the State's case and are considered to be evidentiary facts only. See Holton v. State, 487 S.W.3d 600, 609-10 (Tex.App.--El Paso 2015, no pet.). That the prosecutor dismisses a case simply because she believes she has insufficient evidence to convict is not mistake or false information. See Texas Dept. of Pub. Safety v. Collmorgen, 14-06-00478-CV, 2007 WL 853812, at *2 (Tex.App.--Houston [14th Dist.] Mar. 22, 2007, no pet.)(mem. op., not designated for publication), citing Thomas v. State, 578 S.W.2d 691, 699 (Tex. Crim. App. 1979). Consequently, in this case, the significance of the detective's mistake of age does not call into question the existence of probable cause for the grand jury to indict but instead relates to the State's ability to meet its evidentiary burden of proving, at a minimum, that V.H.B. was 17

years or older at the time he committed two or more of the alleged predicate acts during a period of 30 or more days in duration. TEX.PEN.CODE ANN. § 21.02.

Insufficient evidence to convict does not equate to a lack of probable cause to indict. See Texas Dept. of Pub. Safety v. Williams, 76 S.W.3d 647, 651 (Tex.App.--Corpus Christi 2002, no pet.), citing Ex parte Thomas, 956 S.W.2d 782, 786 (Tex.App.--Waco 1997, no writ). Insufficient evidence to convict beyond a reasonable doubt neither invalidates an indictment nor calls for its dismissal. See Harris County Dist. Attorney's Office v. M.G.G., 866 S.W.2d 796, 799 (Tex.App.--Houston [14th Dist.] 1993, no writ), citing Givens v. State, 438 S.W.2d 810, 810 (Tex. Crim. App. 1969). That the State chose to dismiss the indictment in this case does not change the outcome.

Conclusion: Nothing in the record indicates the trial court found the indictment or information was dismissed or quashed because of mistake, false information, or some other reason indicating absence of probable cause at the time of dismissal to believe V.H.B. was the person who committed the offense. See TEX.CODE CRIM.PROC.ANN. art. 55.01(a)(2)(A)(ii); In re I.V., 415 S.W.3d 926, 930 (Tex.App.--El Paso 2013, no pet.). The record shows that V.H.B. was 17 years of age or older during the period alleged in in the indictment, and this evidence supports the trial court's ruling. For the foregoing reasons, the trial court had sufficient evidence by which it could have determined that the grand jury did not base its decision to indict on a mistake indicating an absence of probable cause at the time of dismissal that V.H.B. was the person who committed the offense. V.H.B.'s sole issue on appeal is overruled. The trial court's judgment is affirmed.

DETERMINATE SENTENCE ACT

A PETITION THAT INCLUDES BOTH ELIGIBLE AND INELIGIBLE OFFENSES MAY BE REFERRED TO THE GRAND JURY, BUT A DETERMINATE SENTENCE MAY BE IMPOSED AS TO THE ELIGIBLE OFFENSE ONLY.

¶ 18-4-3. **In the Matter of D.L.**, MEMORANDUM, No. 03-17-00491-CV, 2018 WL 4016933 (Tex.App.—Austin, 8/23/2018).

Facts: In August 2012, when appellant D.L. was thirteen years old, the State filed a petition alleging that he had committed aggravated sexual assault against a child and indecency with a child by contact; the victim was about a year younger than D.L. On October 5, 2012, the State filed a Notice of Intent to Seek Grand Jury Certification, and on October 17, the grand jury found probable cause that D.L. had engaged in the alleged conduct and "approved" the State's petition seeking determinate sentencing. See Tex. Fam. Code § 53.045(a). About a week later, D.L. and his attorney signed a Waiver of Grand Jury Approval, stating that he understood that "such waiver is an acceptance of the determinate sentencing petition as though approved by the said grand jury, as authorized by Sections 53.045 and 51.09 of the Texas Family Code." The State abandoned the allegation of aggravated sexual assault, and on October 31, D.L. entered a plea of true to the allegation of indecency with a child by conduct. D.L. was adjudicated delinquent and received a determinate ten-year sentence, probated for ten years. In January 2015, D.L.'s probation was revoked and he was ordered committed to TJJD for ten years. In May 2017, the State filed a motion asking that D.L. be transferred from TJJD to TDCJ to serve the remainder of his determinate sentence. A hearing was held before the trial court, and the court signed an order finding that D.L. was still in need of rehabilitation; that he was at a high risk to re-offend; that TJJD lacked programs to benefit D.L.; that D.L. had "over 200 documented incidents of misconduct while at TJJD"; that D.L. had "failed sex offender treatment program on three occasions"; that he posed "a danger to staff and youth"; and that it was in D.L.'s and the public's best interest that D.L. be transferred to TDCJ to serve the remainder of his ten-year sentence.

"A juvenile court may not impose a determinate sentence unless (1) the prosecuting attorney refers the petition to the grand jury; (2) the grand jury approves the petition and certifies its approval; and (3) the grand jury's certification is entered in the record."1 In re J.G., 195 S.W.3d 161, 180 (Tex. App.—San Antonio 2006, no pet.) (citing Tex. Fam. Code § 53.045). Section 53.045 of the family code specifies the offenses for which a juvenile may be given a determinate sentence, including, as relevant to this case, aggravated sexual assault or indecency with a child by contact. Tex. Fam. Code § 53.045(a)(5), (12); see Tex. Penal Code §§ 21.11(a) (indecency with child by contact); 22.021 (aggravated sexual assault). However, the State "may not refer a petition that alleges the child engaged in conduct that violated Section 22.011(a)(2) [sexual assault of a child], or Sections 22.021(a)(1)(B) and (2)(B) [aggravated sexual assault of a child], unless the child is more than three years older than the victim of the conduct." Tex. Fam. Code § 53.045(e).

The State alleged that D.L. committed aggravated sexual assault and indecency by contact against the same victim, who was about one year younger than D.L. D.L. contends that because he was not more than three years older than the victim, as required by section 53.045(e), the determinate sentence and all subsequent orders are void.

Held: Affirmed

Memorandum Opinion: Initially, we note that the record does not reflect that D.L. raised this issue before the trial court. Although juvenile cases are civil proceedings, they are also quasi-criminal. In re C.O.S., 988 S.W.2d 760, 765-66 (Tex. 1999); In re A.I., 82 S.W.3d 377, 379 (Tex. App.—Austin 2002, pet. denied)

("Although juvenile matters are civil proceedings, they are quasi-criminal in nature and thus bear different consideration with regard to issue preservation."); see also In re R.L.H., 771 S.W.2d 697, 702 (Tex. App.—Austin 1989, writ denied) (fundamental error may be raised at any point in proceedings; "error is fundamental when it directly and adversely affects the public interest as that interest is defined in the statutes and constitution"). In considering error preservation in juvenile cases, the supreme court held that we should apply the same preservation rules to juvenile cases as we do in adult criminal proceedings, explaining that "there are essentially three categories of rights and requirements." C.O.S., 988 S.W.2d at 765. There are rights considered "so fundamental to the proper functioning of our adjudicatory process that they cannot be forfeited" by a defendant's inaction—called "absolute rights or prohibitions and systemic requirements"; "forfeitable" rights, which are rights the trial court has a duty to enforce when requested but that can be waived by a failure to call the trial court's attention to the error; and a third category that are " 'not forfeitable,' meaning that they cannot be lost by inaction but that they are 'waivable' if the waiver is affirmatively, plainly, freely, and intelligently made." Id. at 765-66 (cleaned up).

D.L. does not address whether he preserved this issue and attempts to avoid the problem by arguing that the determinate sentence is void. See Ex parte Seidel, 39 S.W.3d 221, 225 (Tex. Crim. App. 2001) (void judgment is nullity and may be attacked by direct or collateral attack); Harris v. State, No. 01-04-01174-CR, 2006 WL 488677, at *2 (Tex. App.—Houston [1st Dist.] Mar. 2, 2006, no pet.) (mem. op., not designated for publication) ("Error need not be preserved to attack a void judgment by direct appeal."). However, "[n]early every case that has held a sentence not 'authorized by law' or void (such that the alleged defect could be raised for the first time on appeal) involved the trial court's assessment of a punishment that was not applicable to the offense under the controlling statutes. That is, the punishment assessed was not within the universe of punishments applicable to the offense." Speth v. State, 6 S.W.3d 530, 532 (Tex. Crim. App. 1999) (cleaned up). Here, the determinate sentence was imposed due to D.L.'s commission of indecency with a child by contact, and a determinate sentence is authorized for such an offense. See Tex. Fam. Code. § 53.045(a)(12). Thus, D.L.'s punishment is not outside "the universe of punishments applicable to the offense." See Speth, 6 S.W.3d at 532; see also A.I., 82 S.W.3d at 381 (sentence was void because statute did not allow for commitment to TYC).

Instead, we believe this issue is more akin to an alleged defect in an indictment or information. A petition under which the State seeks a determinate sentence against a juvenile operates as an equivalent of an indictment or information. See In re J.G., 905 S.W.2d 676, 680 (Tex. App.—Texarkana 1995), writ denied, 916 S.W.2d 949 (Tex. 1995) (per curiam) (for purposes of transferring juvenile to TDCJ, petition approved by grand jury functions as indictment); R.L.H., 771 S.W.2d at 699-700 (disagreeing with juvenile's argument that "petition cannot function as an indictment"). In an adult criminal prosecution, any defect in an indictment or information must be raised before trial or is waived. Ramirez v. State, 105 S.W.3d 628, 630 (Tex. Crim. App. 2003); Aguilar v. State, 846 S.W.2d 318, 320 (Tex. Crim. App. 1993). The issue D.L. complains of does not implicate a fundamental, systemic, or absolute right, and D.L. thus has not shown that the asserted error rises to the level of constitutional error. See R.L.H., 771 S.W.2d at 702 (fundamental error is "extremely rare"). We hold that error, if any can be said to exist, in the petition's inclusion of an offense for which a determinate sentence could not be imposed was waived by D.L.'s failure to object. See In re J.O.E., No. 07-15-00215-CV, 2016 WL 5929600, at *3 (Tex. App.—Amarillo Oct. 11, 2016, no pet.) (defects in charging instrument's fundamental, constitutional requirements cannot be waived, but defects, errors, or irregularities in instrument's form or substance "are considered to be of a non-jurisdictional nature and can be waived"); In re A.D.J., No. 03-96-00210-CV, 1996 WL 591140, at *3 (Tex. App.—Austin Oct. 16, 1996, writ denied) (per curiam) (not designated for publication) (juvenile waived defect in determinate-sentence petition by failing to object in trial court to lack of signatures by nine grand jurors).

However, even if D.L. had preserved the issue, we would hold that it was not reversible error for the petition to include the abandoned allegation. In In re J.G., our sister court addressed a similar contention—that because "the petition included an offense not eligible for determinate sentencing, the grand jury certification is void, and as such, the trial court had no jurisdiction over the case." 195 S.W.3d at 180. In that case, the petition certified by the grand jury alleged aggravated sexual assault and indecency by exposure, but the State abandoned the indecency charge. Id. The court held that because the sexual-assault charge supported a determinate sentence, the grand jury had the authority to certify the petition "with respect to" that charge. Id. The court disagreed with the juvenile's contention that the grand jury's certification was a nullity because the petition included the abandoned indecency allegation, noting that although one of the alleged crimes would not have supported a determinate sentence, the other offense, on which the State proceeded, did, and holding that the requirements of section 53.045 were met. Id.

Similarly, although this specific question was not directly at issue, we believe our decision in In re J.H. is useful to our analysis. 150 S.W.3d 477 (Tex. App.—Austin 2004, pet. denied). In that case, J.H. was accused of nine counts of delinquent behavior—aggravated sexual assault, indecency with a child by contact, and indecency with a child by exposure. Id. at 479. The trial court found six of the allegations to be true, and because it found that J.H. had "engaged in a violation of the offense of aggravated sexual assault," assessed a determinate sentence of twenty-five years. Id. at 479-

80. J.H. appealed, arguing in part "that the trial court erred in assessing a determinate sentence after finding that he engaged in two counts of indecency with a child by exposure because that offense is not among the listed offenses for which a determinate sentence can be ordered." Id. at 480. We held:

Based on a plain reading of the statute, we conclude that even one violation of one penal law listed in section 53.045(a) of the family code is sufficient for the imposition of a determinate sentence. Here, J.H. was found to have engaged in both aggravated sexual assault and indecency with a child by contact, both of which are listed in section 53.045(a). That he also engaged in another offense—one not listed in section 53.045(a)—does not prohibit the assessment of a determinate sentence.
Id. at 481.

D.L. urges us to disregard J.H. because that case did not "dispose of the antecedent question of whether a determinate sentence was authorized in the first place." He attempts to distinguish J.G. by arguing that our sister court "apparently was not asked to consider, nor did it consider, whether, since the Legislature chose the word 'petition' in 53.045(e), this means that a petition covered by that subsection may not be referred to the grand jury for approval if it also contains an eligible determinate sentence offense allegation." He emphasizes the use of the word "petition" in section 53.045, as opposed to "offense," which he argues the legislature would have used had it intended to allow for ineligible offenses to be included with eligible offenses.

Reading section 53.045 carefully, as D.L. urges us to do, that statute provides that a petition may be referred to the grand jury and subsequently support a determinate sentence "if the petition alleges that the child engaged in delinquent conduct ... that included the violation of any of the following provisions," and then goes on to list the offenses eligible for determinate sentence. Tex. Fam. Code § 53.045(a) (emphasis added). Section 53.045 does not state that a petition referred to the grand jury can only allege eligible offenses. Considering all of the language chosen by the legislature, it follows that the petition must include at least one eligible offense but is not limited to alleging only eligible offenses. Instead, logic requires the conclusion that a petition that includes both eligible and ineligible offenses may be referred to the grand jury, and a determinate sentence may be imposed as to the eligible offense.

Finally, even if there was preserved error in the petition's listing a non-eligible offense, D.L. has not shown that his substantial rights were harmed by that inclusion, since he was given a determinate sentence based on the indecency allegation, which does not require the juvenile to be more than three years older than the victim of his conduct. See id. § 53.045(a), (e). The allegation of aggravated sexual assault was abandoned before D.L. entered his plea. See In re J.H., 150 S.W.3d at 485-86 (courts should apply criminal harm analysis to determinate sentences, meaning judgment must be reversed unless court determines beyond reasonable doubt that constitutional error did not contribute to adjudication or punishment, but other non-constitutional errors will be disregarded unless they affect substantial rights). We overrule D.L.'s sole issue on appeal.

Conclusion: We have overruled D.L.'s issue on appeal. We therefore affirm the trial court's order of adjudication with a determinate sentence and all subsequent orders, including the order transferring him to TDCJ for the remainder of his sentence.

SEARCH & SEIZURE

PROBATION CONDITION RESTRICTING USE OF "ANY TYPE OF ELECTRONIC [DEVICE] AT ANY TIME UNLESS IT IS FOR SCHOOL PURPOSES ... MEAN[ING] NO CELL PHONE, COMPUTER, OR IPOD, ECT. [SIC]," USED IN MOTION TO MODIFY WAS PRESENTED UNCHALLENGED, IN JUVENILE COMMITMENT TO TJJD.

¶ 18-4-2. **In the Matter of A.T.D.**, MEMORANDUM, No. 06-18-00028-CV, 2018 WL 4312980 (Tex.App.—Texarkana, 8/30/2018).

Facts: On June 23, 2017, the trial court modified A.T.D.'s conditions of probation, which included additional restrictions on his use of cell phones and computers, and placed him under the supervision of his grandparents, Lewis and Felicia. The trial court issued a third directive to apprehend on July 11, 2017, based on the State's allegations that A.T.D. had continued to violate the conditions of probation. Shortly thereafter, the trial court modified A.T.D.'s conditions by restricting his use of "any type of electronic [device] at any time unless it is for school purposes ... mean[ing] no cell phone, computer, or iPod, ect. [sic]."

On March 12, 2018, the State filed a petition to modify disposition of probation alleging that A.T.D. violated the terms and conditions of his probation (1) by testing positive for THC on a drug test administered by the juvenile probation department and (2) by being in possession of an electronic device, namely, a tablet capable of internet access.

After closing arguments, the State asked the trial court to terminate A.T.D.'s juvenile probation and to commit him to the TJJD. A.T.D. asked the court to allow him to remain on probation and to order him to complete additional community service hours or to participate in counseling. The trial court granted the State's motion, revoked A.T.D.'s probation, and sentenced him to TJJD. This appeal followed.

Held: Affirmed

Memorandum Opinion: In its disposition order, the trial court found that A.T.D. had violated the terms and conditions of his probation and that it was in the best interest of A.T.D. to be placed outside of his home. In addition, the trial court made the following findings: (1) his parents lacked the ability to provide him with a suitable home environment; (2) there was a lack of adequate placement to address his needs; (3) reasonable efforts had been made to prevent or eliminate the need for A.T.D. to be removed from the home; (4) A.T.D.'s grandparents could not provide the quality of care and level of support and supervision that he needed to meet the conditions of his probation; (5) A.T.D. had a history of aggressive behavior; (6) local resources available to the court were inadequate to properly rehabilitate A.T.D; and (7) the nature of the offense warranted A.T.D.'s transfer to a more restrictive environment.

A.T.D. does not dispute that he violated the terms of his probation (emphasis added). Rather, A.T.D maintains that the evidence was legally and factually insufficient to demonstrate that (1) placement in TJJD was in his best interest, (2) reasonable efforts were made to prevent or eliminate the need for his removal from his home, and (3) his grandparents could not provide the quality of care and level of support and supervision he needed to meet the conditions of his probation.

We are unable to conclude that the trial court acted arbitrarily or without reference to guiding principles when it revoked A.T.D.'s probation and committed him to TJJD. First, the trial court was presented with evidence that A.T.D. had been adjudicated of a serious offense, that is, injury to a child. The record also showed that the trial court had, on a number of occasions, sought available alternatives for A.T.D. and had given him multiple opportunities to successfully complete his probation. Other than increasing the amount of A.T.D.'s community service work, the evidence showed that there were no additional programs or resources available to the court to assist with A.T.D.'s rehabilitation. Despite repeated efforts on the part of the trial court, A.T.D. showed a repeated disregard for authority and continued to violate his conditions of probation by using illegal drugs and by being in possession of an electronic device which he used to discuss, among other inappropriate things, the use of illegal drugs.

Moreover, before being placed with his grandparents, A.T.D. had been placed with Jennifer, his aunt. Because A.T.D. would not abide by the conditions of his probation, Jennifer refused to continue to supervise him or to allow him to reside with her. In addition, Lewis testified that he knew of no one else who would be willing and able to assume responsibility for A.T.D. while he was on probation. Thus, the record shows that less restrictive placement options were unavailable. Contrary to A.T.D.'s position, the evidence was legally and factually sufficient to support the trial court's findings underlying its disposition order.

Conclusion: Because the trial court did not abuse its discretion in committing A.T.D. to TJJD, we overrule his point of error. We affirm the trial court's judgment.

A CONDITION OF PROBATION REQUIRING PRIOR APPROVAL FOR INTERNET USE BY THE PROBATION DEPARTMENT, SUBJECT TO THE INTERPRETATION THAT "PRIOR APPROVAL" DOES NOT REQUIRE THAT HE OBTAIN INDIVIDUAL APPROVAL FROM HIS PROBATION OFFICER FOR EACH SPECIFIC INSTANCE OF INTERNET USE.

¶ 18-4-7. **U.S. v. Melton**, No. 17-40374, --- Fed.App. ----, 2018 WL 5116557 [U.S.Ct. App. (5th Cir.), 10/19/2018]. Per Curiam.

Facts: In March 2016, Daniel Melton posted the following advertisement on Craiglist:

Late 30s male seeking younger female that wants to be daddy's girl. Would love a young teen that needs to be trained or has little experience. If you want to be a daddy's girl respond with pics and some information about yourself. Put daddy as a subject to weed out spam.

An undercover Homeland Security Investigation Special Agent, Autumn West, responded to Melton's ad. West's first communication with Melton read: "My name is Nicole and my daughter[']s name is Kacie. Lucky for you, we[']re an incest family looking for an addition. Let me know." Over the course of the next two weeks, Melton and "Nicole" exchanged electronic correspondence almost every day via Yahoo messenger, email, and text messages. Throughout these conversations, "Nicole" made it clear to Melton that "Kacie" was a fourteen-year-old girl in the eighth grade. Melton frequently and directly expressed his interest in performing a variety of explicit sexual acts with both "Kacie" and "Nicole," and "Nicole" responded with enthusiasm. At one point, Melton sent "Nicole" a picture of his penis and then exchanged messages directly with West as "Kacie," asking her what she thought of it and discussing in explicit detail having her "play" with it.

Melton and "Nicole" arranged to meet at a Taco Bell, where Melton was promptly arrested upon arrival. Melton admitted to placing the advertisement and confirmed that he was the one who sent the explicit messages in question to "Nicole" and "Kacie." He confessed that he believed he was meeting a real mother and her minor daughter, and stated that he had "fucked up." The defendant also told the officers that he had not originally sought an underage girl when he placed the Craigslist ad, and that by "young teen" he had meant an eighteen or nineteen-year-old interested in role playing.

Juvenile Law Section www.juvenilelaw.org Volume 32, Number 4

Daniel Melton was found guilty after a jury trial of attempted coercion and enticement of a minor in violation of 18 U.S.C. § 2422(b). He was sentenced to 120 months of imprisonment and 25 years of supervised release, including a special condition prohibiting him from accessing the Internet, "except for reasons approved in advance by the probation officer." On appeal, Melton contends that the district court reversibly erred by commenting on the evidence during jury instructions, and argues that the condition restricting his Internet access is unreasonably restrictive and should be modified or amended.

Held: Affirmed (conditionally)

Opinion (Per Curiam): Melton next argues that the district court abused its discretion by imposing a condition of supervised release prohibiting him from "access[ing] the Internet except for reasons approved in advance by the probation officer." He contends this condition is unreasonably restrictive because it requires him to request permission every time he needs to access the Internet, and he requests that it be remanded to the district court to modify or amend so that it is not construed in such a manner.

Melton challenges a special condition of his supervised release prohibiting him from accessing the Internet "except for reasons approved in advance by the probation officer." Conditions of supervised release must be reasonably related to the following statutory factors:

(1) the nature and circumstances of the offense and the history and characteristics of the defendant, (2) the need to afford adequate deterrence to criminal conduct, (3) the need to protect the public from further crimes of the defendant, and (4) the need to provide the defendant with needed training, medical care, or other correctional treatment in the most effective manner.

(2) United States v. Paul, 274 F.3d 155, 164–65 (5th Cir. 2001) (cleaned up); see 18 U.S.C. § 3583(d); 18 U.S.C. § 3553(a)(1)–(2). Additionally, "supervised release conditions cannot involve a greater deprivation of liberty than is reasonably necessary to achieve the latter three statutory goals." Paul, 274 F.3d at 165; see § 3583(d)(2). Melton does not argue that the condition is not reasonably related to the statutory factors; instead, he contends that the condition is "unreasonably restrictive" under § 3583(d)(2).

We have routinely upheld special conditions of supervised release similar to Melton's. See United States v. Ellis, 720 F.3d 220, 225 (5th Cir. 2013); United States v. Miller, 665 F.3d 114, 124, 132-34 (5th Cir. 2011); Paul, 274 F.3d at 169–70. However, Melton does not request that we vacate the condition entirely. Instead, he requests that it be modified or amended "so that it is not construed or enforced in such a manner that Mr. Melton would be required to seek prior approval of the probation officer every single time he must access the Internet."

In support, Melton cites to United States v. Sealed Juvenile, 781 F.3d 747, 756 (5th Cir. 2015). In that case, we addressed a substantially similar condition prohibiting the appellant from "us[ing] a computer with access to any 'on-line computer service' at any location without the prior written approval of the probation officer." Id. at 755. As we noted in Sealed Juvenile: "We must recognize that access to computers and the Internet is essential to functioning in today's society. The Internet is the means by which information is gleaned, and a critical aid to one's education and social development." Id. at 756.2 Therefore, we concluded that the condition was unreasonably restrictive "[t]o the extent [it] require[d] [the appellant] to request permission ... every time he needs to access the Internet," and affirmed the condition subject to our interpretation that approval for each instance of Internet access was not required. Id.

We find that a similar result is warranted here. From the record before us, it is not clear whether Melton's condition as written would require a separate pre-use approval by his probation officer every single time he accesses the Internet, as Melton claims it does, or only requires preapproval for categories of use, as the Government contends. As Sealed Juvenile demonstrates, an otherwise permissible condition limiting Internet access can be unreasonably restrictive if given the more austere of these two interpretations. Accordingly, as in that case, we affirm Melton's condition subject to the interpretation that "prior approval" does not require that he obtain individual approval from his probation officer for each specific instance of Internet use. See id.

Conclusion: For these reasons, we affirm Melton's conviction and affirm the condition of supervised release restricting his Internet access subject to the above interpretation.

WAIVER AND DISCRETIONARY TRANSFER TO ADULT COURT

IN A WAIVER AND DISCRETIONARY TRANSFER TO ADULT COURT, TRIAL COURT DID NOT ABUSE ITS DISCRETION BY WAIVING ITS JURISDICTION BECAUSE THE COURT'S ULTIMATE WAIVER DECISION WAS MADE WITH REFERENCE TO GUIDING RULES AND PRINCIPLES.

¶ 18-4-5. **In the Matter of C.R.**, --- S.W.3d ----, 2018 WL 4190051 [Tex.App.—Houston (1st Dist.), 8/31/2018].

Facts: In March 2017, the State filed petitions in Harris County juvenile court alleging that appellant C.R., at age 16, engaged in delinquent conduct by committing aggravated robbery with a deadly weapon,1 evading detention,2 capital murder,3 and aggravated assault with a deadly weapon.4 Pursuant to section 54.02(a) of the Family Code, the State later petitioned the juvenile court to waive its exclusive original jurisdiction and transfer appellant to the criminal court for further proceedings on each of the charges, excluding evading detention. The juvenile court ordered a certification examination, which was conducted prior to the certification hearing.

At the hearing, the trial judge took judicial notice of the court's file for each of the three cause numbers for which the State sought certification. The State called Harris County Sheriff's Office Detective J. Roberts as a witness. In January 2017, Detective Roberts was notified of a reported shooting in a movie theater parking lot. Two males, Daniel Gerding and C.T., had sustained gunshot wounds. Gerding had been shot twice in the back, and he later died of his injuries. The autopsy report on Gerding's body noted that he had two gunshot wounds to his back, each with an exit wound through the chest. It identified the cause of Gerding's death as gunshot wounds to the chest, and homicide as the manner of death.

C.T. had been shot in the face. Detective Roberts testified that a bullet passed through C.T.'s left jaw socket and exited through his right jaw socket. C.T. survived his injuries. Photographs of his injuries were admitted into evidence.

Detective Roberts did not have an opportunity to speak with Gerding before he passed away. Both Gerding and C.T. were transported to the hospital before Detective Roberts arrived at the movie theater. However, Detective Roberts testified that responding officers informed him that Gerding stated at the scene that he and C.T. were robbed in his car by a Hispanic male and female. The certification evaluation report, which was admitted into evidence, stated that Gerding had further indicated that he was shot during a drug transaction that "went bad."

As part of his investigation, Detective Roberts inspected a car that was parked in the movie theater parking lot. He testified that bags of marijuana were scattered outside of the car, and the way the marijuana was packaged indicated that it may have been intended for sale. He further testified that the "unorganized" placement of the bags suggested that "some type of incident" occurred at the car. Two mobile phones, which were later determined to belong to Gerding and C.T., respectively, were collected from inside and around the car. Roberts determined that the car was registered to Gerding's father.

Once C.T. recovered from his injuries, he gave a statement to Detective Roberts. C.T. stated that on the night of the shooting, Gerding arranged to meet a "Hispanic female" in the movie theater parking lot. C.T. and Gerding were sitting in Gerding's parked car when the female arrived. She was accompanied by a Hispanic male, and they both got into the back seat of Gerding's car. C.T. informed Detective Roberts that there was some conversation between the others in the car, and Gerding abruptly attempted to exit the car. The male then shot Gerding twice in the back. C.T. turned around, and the male shot him in the face.

Detective Roberts obtained telephone records for the mobile phones that were recovered at the scene of the shooting. The telephone number associated with the last incoming calls to and outgoing calls from Gerding's phone prior to the shooting was registered to the father of a local high school student, F.D. Detective Roberts met with F.D. at her school. She told him that on the night of the shooting, she had met with appellant at a party. He asked her to set up a meeting with a drug dealer so he could rob the person. F.D. sent text messages to several people who she knew sold drugs, including Gerding, who was the first to respond to the text message. F.D. asked him for marijuana, and they agreed to meet at the movie theater.

F.D. told Detective Roberts that appellant drove her to the theater in a white pickup truck. When they arrived, appellant parked on the side of the building. They both got into the back seat of Gerding's car, which already was parked at the theater. F.D. stated that Gerding showed them a gram of marijuana, and appellant grew impatient because it was not the amount they had agreed upon. Appellant then displayed a semi-automatic handgun. Gerding tried to leave the car, and appellant shot him twice. Then appellant shot C.T. in the face.

F.D. stated that she and appellant ran back to the truck. Appellant told F.D. that he had dropped the clip from his weapon. He also asked for her mobile phone, which he broke and later threw out of the car. He told her not to tell anyone about what happened. F.D. told Detective Roberts that appellant drove to a gas station and parked at a pump. She explained that appellant got out of the truck and walked toward the store at the gas station. He went back to the truck, and he changed his clothing before walking back toward the store and going inside. They left the gas station and went to a party. Then appellant dropped her off at home.

Based on the name, age, and description provided by F.D., Detective Roberts obtained a photograph of appellant. He showed the picture to F.D., and she confirmed that he was the person who shot Gerding.

Detective Roberts obtained surveillance video footage from the gas station, which he believed corroborated F.D.'s statement. He stated that the video showed a white pickup truck pulling up to the pump. A male got out of the truck, walked toward the store, and then walked back to the truck before entering the store. The summary of the offense included in the certification evaluation report stated that the male entered the

store wearing different-colored shoes than when he initially exited the truck. Although he could not positively identify appellant in the video, Detective Roberts stated that the footage of the male entering the store "appears" to fit appellant's description. The video was admitted into evidence.

Detective Roberts created a photographic lineup including a picture of appellant, and he showed it to C.T., who had gotten a full view of the shooter's face immediately before he was shot. He was "55 to 60 percent" certain that appellant was the person who shot him.

During Detective Roberts's investigation, appellant was arrested in connection with a carjacking that occurred on March 1, 2017. Based on Detective Roberts's testimony and information contained in the certification-evaluation report, the State presented evidence that the complainant in that case, Rene Venezuela, reported that he left his truck running while he went into his house. As he returned to his truck, he saw a Hispanic male with short hair sitting in the driver's seat. The male was wearing a white shirt, red pants, and a mask. When the Hispanic male saw Venezuela, he pointed a gun at him and told him to "get in the car." Venezuela ran back into his house, and the male drove away in the truck.

Venezuela had left his mobile phone in his truck, and the police located the truck by tracking the phone. Officers attempted to stop the truck, and the driver led them on a high-speed chase for approximately ten minutes. The truck ran over a curb and crashed into a retaining wall. Appellant, who had been driving the truck, then attempted to flee on foot before he was apprehended and arrested.

Police recovered a backpack from the truck. It contained, among other items, clothing matching the description given by Venezuela and pictures of appellant. Venezuela identified the clothing as that which had been worn by the person who stole his truck. Police also recovered a handgun from the truck. Detective Roberts testified that ballistics testing of the gun demonstrated that it was the same gun used in the January shooting of Gerding and C.T.

Appellant was charged with capital murder of Gerding and aggravated assault of C.T. He also was charged with the aggravated robbery of Venezuela. F.D. was 17 at the time of the shooting, and she was charged, as an adult, with capital murder related to Gerding's death.

The State also called C. Williams, an agency representative for the Harris County Juvenile Probation Department. Williams testified about appellant's history with the Juvenile Probation Department. Appellant was first placed on probation in January 2013, and he spent one year in the Harris County Youth Village. In March 2014 he was placed on probation for criminal mischief. In September 2014 he appeared in court on charges of assaulting and harassing a public servant. He was placed in the custody of his mother under the "intensive supervision program." Appellant again appeared in court in January 2015 for burglary of a habitation and violation of probation, and he was placed in the Juvenile Probation Department's custody at the Harris County Leadership Academy. Then, in September 2015, he was charged with violating his probation and burglary of a vehicle. Williams testified that the burglary charge was dismissed, and appellant was committed to the Texas Juvenile Justice Department for the probation violation. Appellant also had been to the Burnett-Bayland Rehabilitation Center. Williams stated that appellant was on parole when he was arrested on the currently pending charges. The certification evaluation showed that appellant had seven prior referrals to the Juvenile Probation Department related to criminal activity.

Williams testified that since being placed in juvenile detention in connection with the charges now pending against him, appellant had 18 disciplinary infractions. In her opinion, the Juvenile Probation Department already had done everything it could using the resources available to it to rehabilitate appellant. She did not believe there was any other placement for appellant within the Juvenile Probation Department.

The certification evaluation report offered into evidence included results of a joint psychological and psychiatric evaluation conducted by Dr. Alexandra Tellez and Dr. Linda Wittig. The evaluation consisted of many tests, including a Risk Sophistication Treatment Inventory (RSTI), which is used to assess juvenile offenders in the areas of risk of dangerousness, sophistication and maturity, and amenability to treatment. C.R.'s RSTI results in the "Planned & Extensive Criminality" category were in the "High" range. Based on the results of the RSTI and cognitive and clinical assessments, Dr. Tellez determined that C.R. exhibited a "high level of criminally based sophistication and dangerousness" compared to other "delinquent youth" his age and an "average" level of maturity in comparison to other delinquent youth his age. A summary included in the report stated that the test results indicated that C.R. "exhibited more autonomous behavior used to plan crimes and appears to have a more ingrained criminological lifestyle."

In making her assessment, Dr. Tellez noted that although C.R. tested in the high range for "Planned and Extensive Criminality" even when the present offenses were excluded, the allegations relating to the pending charges presented an additional factor of premeditation. His "solo" participation in the aggravated robbery suggested that he took a "leadership role" in committing crimes.

Appellant did not call any witnesses. He argued that the State relied solely on witness testimony in the capital-

murder and aggravated-assault cases, and it had merely established "possible" cause, but not probable cause. He noted that the State had a "video, sketchy photo array, 55 to 60 percent positive." He conceded that the State had shown he fled from a motor vehicle.

The juvenile court found that there was probable cause to believe that appellant committed capital murder, aggravated assault, and aggravated robbery, as alleged in the State's petitions. The court additionally found that based on the seriousness of the offenses alleged and appellant's background, the welfare of the community required criminal proceedings. The court certified appellant as an adult, and it granted the State's motion to waive jurisdiction in the capital-murder, aggravated-assault, and aggravated-robbery cases. The evading-detention charge was nonsuited on a motion by the State, and the court ordered that the remaining cases be transferred to criminal district court.

In all four cases, including the evading-detention case that was nonsuited by the State, appellant filed a notice of appeal from the juvenile court's order waiving jurisdiction. See TEX. FAM. CODE § 56.01(c)(1)(A). Because there is no appealable order in the dismissed, now-moot evading-detention case, we dismiss appellate case no. 01-18-00186-CV for want of jurisdiction.

Held: Affirmed

Opinion: In two issues, appellant contends that the juvenile court abused its discretion by waiving jurisdiction because the evidence was legally and factually insufficient to support transferring the cases to a criminal district court. In his first issue, he argues that the evidence was insufficient to support the determination of probable cause that he committed the offenses. See TEX. FAM. CODE § 54.02(a)(3). In his second issue, he challenges the sufficiency of the evidence to support the determination that because of the seriousness of the offenses alleged or his background, the welfare of the community required criminal proceedings. See id. § 54.02(a)(3), (f).

The juvenile courts have exclusive original jurisdiction over proceedings involving "delinquent conduct" by children between 10 and 17 years old. Id. §§ 51.02(2)(A), 51.04(a). When a child engages in "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," it is considered "delinquent conduct." Id. § 51.03(a)(1). Under circumstances specified by statute, the juvenile court may exercise its discretion to waive its exclusive jurisdiction and transfer a child to the criminal district court for criminal proceedings. See id. § 54.02; Moon v. State, 451 S.W.3d 28, 38 (Tex. Crim. App. 2014).

One circumstance in which a juvenile court may waive its exclusive jurisdiction is when no adjudication hearing has been conducted concerning a charge that a child committed, at the age of 14 years old or older, an eligible felony offense, including a capital felony. TEX. FAM. CODE § 54.02(a)(2)(A). Before it may properly exercise its discretion to transfer the child for criminal proceedings in a district court, a juvenile court must determine, after a full investigation and a hearing, "that there is probable cause to believe that the child ... committed the offense alleged and that because of the seriousness of the offense alleged or the background of the child the welfare of the community requires criminal proceedings." Id. § 54.02(a)(3); see also Moon, 451 S.W.3d at 46. The juvenile court must state specifically in the order its reasons for waiver. TEX. FAM. CODE § 54.02(h).

On appeal, we review the legal and factual sufficiency of the evidence to support the juvenile court's specific factual finding. See Moon, 451 S.W.3d at 50. Our review is limited to the facts that the juvenile court expressly relied upon in its transfer order. Id.

In reviewing the legal sufficiency of the evidence, we view the evidence in the light most favorable to the findings and disregard contrary evidence unless a reasonable factfinder could not reject it. In re S.G.R., 496 S.W.3d 235, 239 (Tex. App.—Houston [1st Dist.] 2016, no pet.) (citing Moon v. State, 410 S.W.3d 366, 371 (Tex. App.—Houston [1st Dist.] 2013), aff'd, 451 S.W.3d 28 (Tex. Crim. App. 2014)). If there is more than a scintilla of evidence to support the finding, then the evidence is legally sufficient. Id. Under a factual sufficiency review, we consider all of the evidence presented to determine if the juvenile court's finding conflicts with the great weight and preponderance of the evidence so as to be clearly wrong or unjust. Id.

Given the repeated failures of the prior rehabilitative measures and the increasingly violent nature of appellant's behavior, we conclude that more than a scintilla of evidence supports the juvenile court's determination that this factor weighs in favor of appellant's certification as an adult. Even taking into account the potential rehabilitative measures referenced in the various reports, we cannot say that the juvenile court's determination conflicted with the great weight and preponderance of the evidence, given the failure of previous rehabilitative attempts.

Conclusion: The juvenile court found that each of the section 54.02(f) factors weighed in favor of discretionary transfer. We have found that the court's factual findings concerning each of the factors were supported by legally and factually sufficient evidence. The juvenile court's order reflects that it considered the evidence in light of the statutory factors. Because the court's ultimate waiver decision was made with reference to guiding rules and principles, we conclude that it did not abuse its discretion by waiving its jurisdiction.

We dismiss appellate case no. 01-18-00186-CV for want of jurisdiction.

Juvenile Law Section www.juvenilelaw.org Volume 32, Number 4

In appellate case nos. 01-18-00185-CV, 01-18-00187-CV, and 01-18-00188-CV, we affirm the juvenile court's order waiving jurisdiction.

A DISCRETIONARY TRANSFER PETITION FILED BEFORE A CHILD'S 18TH BIRTHDAY AND HEARD AFTER THE CHILD'S 18TH BIRTHDAY FOLLOWS TEX. FAM. CODE ANN. § 54.02(A) (UNDER 18 PROVISION).

¶ 18-4-4. **In the Matter of P.A.B.**, MEMORANDUM, No. 14-18-00290-CV, 2018 WL 4354679 [Tex.App.—Houston (14th Dist.), 9/13/2018].

Facts: In November 2017, three months before appellant turned 18, eight-year-old Amaya1 made a disclosure of ongoing sexual abuse by appellant to her grandmother, who reported the outcry to the police. Appellant was arrested, and his case was referred to the Brazoria County Juvenile Justice Department ("JJD") for its recommendation as to whether appellant should be tried as a juvenile or an adult for his offenses against Amaya. The JJD recommended appellant be certified as an adult for two reasons: (1) the seriousness of the offense, and (2) appellant's age.

Two weeks before appellant turned 18, the State petitioned the juvenile court to waive jurisdiction and transfer appellant to criminal district court. Tex. Fam. Code Ann. § 54.02(a). The petition alleged appellant committed two counts of aggravated sexual assault of a child (a first-degree felony) and one count of indecency with a child (a third-degree felony) when he was 16.2

The juvenile court conducted a hearing on the State's petition six weeks after appellant turned 18. Id. § 54.02(c). Four witnesses testified at the hearing: (1) Eric Morton, one of the detectives assigned to the investigation; (2) Michael Fuller, M.D., a psychiatrist who evaluated appellant; (3) Tiffany Jones, the JJD employee who recommended appellant be certified as an adult; and (4) Doris, appellant's half-sister. The State's petition, the police report, Dr. Fuller's report, Jones' predisposition report, appellant's school records, and letters from educators at appellant's school were admitted into evidence without objection.

The juvenile court signed a five-page order ("Transfer Order") detailing its findings and bases for granting the State's petition to waive jurisdiction and transfer appellant to criminal district court. The court expressly found the State exercised due diligence to file its petition and prosecute the case, given that appellant was three months shy of 18 when the alleged abuse was reported to police, the district attorney received the police report two months before appellant turned 18, and the JJD made its recommendation two weeks before appellant's 18th birthday.

The juvenile court then made findings about appellant and his alleged offenses. For ease of reading, we have grouped the findings by topic.

Facts and nature of the alleged offenses
• Appellant allegedly committed felonies against a person.
• Amaya was five years old when the alleged offenses began and seven or eight years old when they stopped.
• Appellant was 15 to 17 years old when he allegedly committed the offenses.
• Appellant is Amaya's uncle.
• Amaya disclosed appellant put his sexual organ on her sexual organ.
• Amaya also disclosed appellant put his mouth on her sexual organ and attempted to get her to put her mouth on his sexual organ, but she refused.
• Appellant admitted to masturbating while he rubbed Amaya's buttock.
• There is probable cause to believe appellant committed the alleged offenses.

Appellant's familial, social, and educational history
• Appellant said he was abused by his biological parents and removed from his home.
• Appellant has been adopted.
• Appellant is currently in school and gets along well with the teachers. He is not in special education classes.

Appellant's physical and mental health
• Appellant denied mental health issues or major health issues.
• Dr. Fuller conducted a diagnostic study on appellant and found as follows:
• Appellant's speech and thought processes were logical, coherent, goal directed, and devoid of the stigmata of persistent psychosis.
• Appellant showed no signs of "perseveration or flight of ideas."
• Appellant can concentrate appropriately and engage well.
• Appellant denied auditory and visual hallucinations and showed no signs of delusions.
• Appellant did not appear homicidal or suicidal.
• Appellant appears to be of below-average to average intelligence.
• Appellant displayed average ability to concentrate on a task and good short term memory.
• Appellant showed no marked impairment in his ability to make or use sound judgment.
• Appellant manifested an ability to interpret abstract thoughts, which is beneficial to rule out the vulnerability of the effects of organic medical conditions and also to show impairment in certain psychotic states.

Appellant's sophistication and maturity
• Dr. Fuller noted the following about appellant's ability to aid in his own defense:
• Appellant demonstrated significant and appropriate insight into the seriousness of the charges against him.

• Appellant can provide a full, detailed account of the events and assist his lawyer with his defense.
• Appellant understands the difference in consequences he faces if convicted. He understands he can be tried as an adult and go to prison.
• Appellant understands the court system, adversarial system, and concept of plea bargaining.
• Appellant can communicate and interact well with his attorney and others.
• Appellant is of sufficient sophistication and maturity to be tried as an adult and to aid an attorney in his defense.

Prospect of protection of the public and rehabilitation of appellant

• "[B]ecause of the records and previous history of [appellant] and because of the extreme and severe nature of the alleged offense(s), the prospects of adequate protection for the public and the likelihood of reasonable rehabilitation of [appellant] by the use of the procedures, services and facilities which are currently available to the Juvenile Court are in doubt."
• Many of the facilities normally available to the court are not available because appellant is 18 years old.
• Because of the seriousness of the alleged offenses and appellant's background, the welfare of the community requires criminal proceedings.

The preceding findings are computer-printed on the Transfer Order. The juvenile court also handwrote the following:

Juvenile is 18. No effective plan for his rehabilitation in the juvenile system exists due to his age [and] offenses alleged. Due to the history of the juvenile [and] his family, intensive treatment not available in the juvenile system, for the length of time required, is necessary.

The juvenile court concluded:

The Court, after considering all of the testimony, diagnostic study, social evaluation, and full investigation of [appellant], his circumstances, and the circumstances of the alleged offense(s), finds that it is contrary to the best interest of the public for the juvenile court to retain jurisdiction.

The court granted the State's petition and waived jurisdiction.

On appeal, appellant contends (1) the evidence is legally and factually insufficient to support the Transfer Order, and (2) the juvenile court abused its discretion by finding the welfare of the community requires appellant to be tried as an adult.

Held: Affirmed

Memorandum Opinion: We begin with what is not in dispute. Appellant does not challenge the juvenile court's finding that the State exercised due diligence to file its petition and "complete the case." Tex. Fam. Code Ann. § 51.0412(3) (juvenile court retains jurisdiction if, among other things, "the court enters a finding in the proceeding that the prosecuting attorney exercised due diligence in an attempt to complete the proceeding" before the juvenile turned 18). Nor does appellant challenge the juvenile court's findings that: the alleged offenses are felonies (id. § 54.02(a)(1)); appellant was 16 at the time of the alleged offenses and no adjudication hearings have been conducted regarding those offenses (id. § 54.02(a)(2)(A), (B)); probable cause exists to believe appellant committed the alleged offenses (id. § 54.02(a)(3)); and the alleged offenses were against a person (id. § 54.02(f)(1)).

We turn to the findings in dispute. First, appellant makes three challenges to the evidentiary sufficiency of the juvenile court's findings. He contends:
• the evidence is factually insufficient to support the juvenile court's finding that appellant is of sufficient sophistication and maturity to be tried as an adult;
• the evidence is legally and factually insufficient to support the juvenile court's finding that appellant's record and history warranted transfer; and
• the evidence is legally and factually insufficient to support the juvenile court's finding that the prospects of adequate protection of the public and the likelihood of the rehabilitation of the child by the use of procedures, services, and facilities currently available to the juvenile court warranted transfer.

Second, appellant asserts the juvenile court abused its discretion in finding the welfare of the community requires him to be tried as an adult.

The juvenile court heard testimony from the psychiatrist who evaluated appellant, one of the detectives who investigated the alleged offenses, the JJD employee who analyzed appellant's case and recommended he be certified as an adult, and appellant's half-sister. The court also received written reports from the first three of those witnesses, appellant's school records, and six letters from educators familiar with appellant. That evidence addressed nearly every factor in the statutory framework the juvenile court is tasked to consider. With the exception of the findings regarding appellant's record and history, all the juvenile court's findings are supported by legally and factually sufficient evidence.

Conclusion: Despite the lack of evidence to support the record-and-history findings under section 54.02(f)(3), we cannot say the juvenile court's decision to waive jurisdiction was "essentially arbitrary, given the evidence upon which it was based." Id. Instead, the Transfer Order reflects "a reasonably principled application of the legislative criteria." Id. at 49. We conclude the juvenile court did not abuse its discretion in waiving jurisdiction and transferring appellant to criminal district court. We affirm the Transfer Order.