



index to
juvenile-related
opinions of the
attorney general



ATTORNEY GENERAL OF TEXAS
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Table of Contents

Chronological Listing

Opinions by Date	1
Letter Opinions by Date	9
Open Records Decisions by Date	14

Summaries by Topic

Procedure

Juvenile Records & Information	18
Community Supervision and Parole	31
Detention Centers	34
Miscellaneous	36

Specific Crimes

Drugs	40
Truancy	42
Miscellaneous	44

School

Crime	46
Miscellaneous	48

Jurisdiction

County Issues	54
Municipal Issues	60
Court Issues	63
Child Support	66

Transportation

Driving and Driver's Licenses	68
Transportation of Juveniles	70

Health Care	71
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Miscellaneous	73
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Juvenile Crime Intervention Resources	80
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Juvenile Policy Opinions by Date

OPINION #	DATE	RE:
GA-0205	6/18/04	whether a juvenile board may designate a juvenile probation department as the office authorized to determine whether to defer prosecution of a child referred to juvenile court for certain non-violent misdemeanor offenses
GA-0202	6/14/04	whether a school district may bring a disciplinary proceeding against a professional employee for violating the district's corporal punishment policy, although the employee's use of force was justified under §9.62 of the Penal Code
GA-0189	5/19/04	whether a constable may provide police services, under an inter-local agreement between the county and the school district, to a school district that is within the same county, where a portion of the school district lies outside his precinct but within the geographic boundaries of a neighboring constable's precinct
GA-0131	12/15/03	whether a juvenile court may detain a child before adjudicating and disposing of a charge of delinquent conduct, such as contempt of a justice court order
GA-0125	11/25/03	whether a minor may be classified as a "missing child" if the minor's legal custodian knows the minor's whereabouts
GA-0109	9/29/03	definition of "in the custody of a peace officer" for purposes of art. 49.18 of the Code of Criminal Procedure
GA-0106	9/24/03	regarding reporting and investigating child sexual abuse
GA-0067	5/5/03	whether a municipal judge has the authority to examine a state's witness if the state is not represented by counsel when the case is called for trial
GA-0056	4/7/03	whether a local government may broadcast information about registered sex offenders on a local cable television channel
GA-0017	1/29/03	whether, in a proceeding under the Juvenile Justice Code, Title 3 of the Family Code, the state may recover from a child or other non-prevailing party the cost of serving summonses under §53.06 of the Family Code
JC-0584	11/26/02	whether Ch. 37 of the Government Code requires the appointment of licensed court interpreters in justice court proceedings, and related questions

JC-0561	10/11/02	whether the Texas Interagency Council on Early Childhood Intervention is authorized to require local service providers to collect and submit to the Council personally identifiable information regarding children and their families
JC-0538	8/7/02	whether a parent has an unrestricted right of access to the school counseling records of his or her minor child
JC-0516	6/24/02	whether Art. 103.0031, C.C.P. applies when a defendant has failed to appear in a Class C misdemeanor case
JC-0504	5/15/02	whether §37.123 of the Education Code, which creates the offense of “disruptive activity,” requires proof of intent
JC-0500	5/6/02	constitutionality of the racial profiling statute under Art. III, § 35 of the Texas Constitution
JC-0497	4/29/02	whether a peace officer is required to attend continuing education courses regarding enforcement of traffic laws and the use of radar equipment
JC-0491	4/15/02	regarding the validity of a school district policy concerning corporal punishment and physical restraint of students
JC-0459	2/8/02	what are a county’s and school district’s obligations vis-à-vis a juvenile justice alternative education program, and related questions
JC-0454	1/28/02	whether a justice of the peace has authority to sentence a juvenile to detention for contempt, and related questions
JC-0451	1/14/02	whether a driver who falls asleep and drives off the road commits an offense under §545.060(a), Transportation Code (offense of failure to drive in a single marked lane)
JC-0446	12/27/01	whether a school district is required to expel a student who commits certain alcohol-and drug-related felonies within 300 feet of school property
JC-0439	12/3/01	whether statutes cited in various contracts under which Kerr County transferred funds to certain nonprofit entities to serve “children’s needs” authorize the County to make the transfers
JC-0409	9/14/01	whether a social security number is a requirement for a Texas driver’s license (p. 59)
JC-0398	7/11/01	whether Section 25.092 of the Education Code, which relates to minimum attendance for class credit, is applicable to a student who is exempt from compulsory attendance under Section 25.086 (p. 40)

JC- 0393	7/10/01	whether a defendant convicted of multiple Class C misdemeanors who defaults on the fines and court costs he or she is sentenced to pay and who is therefore confined discharges the fines and court costs concurrently or consecutively, and related questions (p.36)
JC- 0387	6/5/01	whether Section 573.012 of the Health and Safety Code authorizes a municipal peace officer to execute an emergency-detention warrant (p. 52)
JC- 0378	5/11/01	regarding application of nepotism and conflict of interest statutes to the governing boards of open-enrollment charter schools (p. 40)
JC- 0371	4/25/01	whether a school district trustee may serve as a volunteer teacher in the same school district (p. 40)
JC- 0337	2/12/01	regarding the proper use of magnetic stripe information on a driver's license (p. 59)
JC- 0333	1/22/01	whether Section 323.019 of the Government Code authorizes the Texas Education Agency to release to the Texas Legislative Council student information that is confidential under federal law (p. 40)
JC- 0332	1/22/01	whether a school district may operate a school outside the district's geographic boundaries (p. 40)
JC- 0325	1/5/01	whether a governmental body may prohibit the holder of a concealed handgun license from carrying a handgun onto property owned or controlled by the respective unit of government (p. 30)
JC- 0320	12/22/00	whether a person who is sentenced to pay a fine and to deferred adjudication probation after pleading guilty to a Class C misdemeanor in county court is entitled to an expunction of his arrest (p. 23)
JC- 0317	12/15/00	whether the addition of certain protest words to a traffic citation constitutes a valid promise to appear in court (p. 59)
JC-0312	11/30/00	regarding the responsibility of a sheriff for taking custody of a person hospitalized for injuries sustained while being arrested by law enforcement officers of a different jurisdiction (p. 46)
JC- 0309	11/20/00	whether a child under the age of 14 may solicit newspaper subscriptions, and related question (p. 64)
JC- 0289	10/3/00	whether a protective order may permit a perpetrator of family violence to collect his personal property from the residence he shared with his victim [clarification of JC-0112 (1999)] (p. 36)
JC- 0277	8/31/00	whether a municipal court may allow criminal defense attorneys to post bail bonds without showing proof of their solvency under articles 17.11, 17.13 and 17.14 of the Code of Criminal Procedure, and related questions (p. 52)

JC-0258	7/18/00	whether a police officer has the authority to detain a motorcyclist riding without a helmet to determine if the motorcyclist has liability insurance (p. 36)
JC- 0246	7/7/00	regarding the amount of credit for time served in a county jail for failure to pay a fine assessed for a Class C misdemeanor (p. 28)
JC- 0242	6/29/00	whether the state has a right to a jury trial in a juvenile proceeding (p. 28)
JC-0229	6/7/00	whether law enforcement officers are authorized to take a 17-year-old into custody simply because he or she has been reported as a missing child under Chapter 63 of the Code of Criminal Procedure, and related questions (p. 64)
JC- 0226	5/26/00	whether “compelling state interest” analysis applies to a state agency’s interference with a parent’s right to direct the upbringing of his or her children (p. 64)
JC-0209	4/12/00	whether juvenile board is authorized to contract with an attorney to represent the board in an action brought against it by the county, and related questions (p. 46)
JC-0129	10/22/99	whether a law enforcement authority may register a parolee who is not required by statute to register as a sex offender, and related questions (p. 23)
JC-0110	9/9/99	regarding authority of a court with jurisdiction over truancy cases to compel the appearance in court of a truant who is living with a custodian, and related questions (p. 34)
JC-0103	9/1/99	regarding juvenile court jurisdiction over a 17-year-old who has violated a truancy order of a justice or municipal court (p. 34)
JC-099	8/23/99	whether a student who is excused from a public school for a temporary absence pursuant to section 25.087(b) of the Education Code may be denied certain benefits (p. 41)
JC-0085	8/9/99	regarding authority of a commissioners court to set salaries for employees of a juvenile probation department, and related questions (p. 46)
JC-0070	7/6/99	whether a polygraph examiner who in the course of an examination learns that a child has been abused or neglected must report that information to the appropriate authorities, and related questions (p. 28)
JC-0056	5/26/99	whether a constable may execute service of process to enforce the compulsory school attendance provisions of the Education Code (p.34)

JC-0041	5/4/99	whether section 141.065 of the Human Resources Code prohibits a peace officer from simultaneously serving as a juvenile probation officer (p. 23)
JC-0010	3/5/99	whether a “Rules and General Conditions of Parole Release” contract that requires the parolee to “comply with Sex Offender Registration Program” in and of itself obligates a local law enforcement authority to register the parolee
DM-476	5/20/98	whether a local school official may refuse to permit a Department of Protective and Regulatory Services investigator, investigating reported child abuse, to interview a child at school, and related questions (p. 41)
DM-464	12/22/97	constitutionality of Senate Bill 1417, ch. 1327 (time payment fee); related questions (p. 55)
DM-461	12/18/97	whether a community supervision and corrections department may refuse to supervise a 16-year-old defendant who has been convicted of perjury (p. 23)
DM-458	11/26/97	whether a registered sex-offender treatment provider must report information regarding possible child abuse (p. 64)
DM-439	5/21/97	whether a juvenile court’s authority to set the terms and conditions of detention supersedes terms of a county contract with a private corporation (p. 55)
DM-437	4/11/97	whether a district court may authorize a convicted sex offender to post a warning sign at the offender’s residence (p. 36, 55)
DM-435	3/6/97	whether a law enforcement agency may destroy all information relating to certain juveniles (p. 15)
DM-433	3/5/97	whether home-rule cities may adopt ordinances to prohibit or restrict cigarette vending machines (p. 32, 52)
DM-427	12/19/96	whether justice and municipal courts have jurisdiction over cases involving alcohol and persons under 21 (p. 32, 38)
DM-413	9/23/96	whether counties are responsible for medical fees for county jail inmates who are not county residents (p. 73)
DM-412	8/28/96	whether county juvenile boards must provide alternative education programs to persons not adjudicated delinquent but expelled from public schools (p. 50)
DM-411	8/28/96	use of interpreters for deaf and hearing-impaired persons in government proceedings; related issues (p. 76)
DM-407	7/29/96	whether trial court judges may allocate the court fees of defendants on community supervision according to the judges’ wishes (p. 33)

DM-400	6/13/96	whether a parent or guardian who teaches driver's education must be licensed (p. 51)
DM-393	5/14/96	whether a pardonable conviction exists after "regular" or "shock" community supervision is completed (p. 33)
DM-386	4/22/96	whether the Texas Education Agency may supply completion certificates to public school driver's education programs that do not meet state standards; related questions (p. 51)
DM-380	3/21/96	whether the county hospital is responsible for county inmates' medical bills (p. 73)
DM-379	3/21/96	whether child support obligors may enter into contracts paid with state funds, specifically contracts with the Texas Medicaid Program (p. 67)
DM-372	1/10/96	whether a juvenile offender who participates in a "teen court" program must still pay municipal court costs (p. 61)
DM-364	8/30/95	Senate Bill 60 (concealed handgun law) and its effect on rapid transit authority; county jurisdiction over parks (p. 56, 76)
DM-363	8/30/95	whether the concealed handgun law permits a business owner to post notices prohibiting the carrying of a concealed handgun on the premises, even by license holders; related questions (p. 76)
DM-354	6/22/95	whether a trial court may appoint an attorney to represent an indigent murder defendant in a post-conviction habeas corpus proceeding (p. 38)
DM-353	6/13/95	Brady Bill and its effect on medical record confidentiality of mentally challenged, ill persons (p. 18, 73)
DM-352	6/13/95	forfeiture of leased student pagers on school property (p. 51)
DM-349	5/31/95	whether a person who has successfully completed deferred adjudication and has been discharged may apply for a pardon (p. 38)
DM-344	5/2/95	whether persons may bet and play card games via computers, electronic devices (p. 77)
DM-335	3/21/95	whether outside entities contracted by school districts are subject to state regulations (p. 51)
DM-334	3/21/95	whether the victim of a crime committed by a minor may have access to the juvenile's criminal record for civil trial purposes (p. 18)
DM-320	2/6/93	whether justice courts have jurisdiction over cases involving alcohol purchases, consumption by minors (p. 41, 65)
DM-318	1/19/95	whether local peace officers must enforce city ordinances (p. 62)

DM-315	1/13/95	duty of local law enforcement officials to Fingerprint (p. 38)
DM-313	1/9/95	whether a county may accept arrestees from municipal police departments; magistrate issues (p. 56, 62)
DM-304	9/24/94	effect of House Bill 681 and Senate Bill 7 on Education Code, section 4.25(a) and (b), regarding parental punishment for child truancy (p. 43, 48)
DM-298	8/2/94	whether a court clerk may charge an applicant for a protective order if the applicant receives government aid (p. 38)
DM-294	6/2/94	what student information law enforcement agencies are authorized to give to public and private schools (p. 19, 51)
DM-291	5/2/94	whether one county may return an indictment from another (p. 56)
DM-262	10/14/93	whether a constable may seize and sell personal property to compensate for delinquent child support payments (p. 67)
DM-245	8/20/93	whether defendants must reimburse the county if interpreters were employed in criminal cases (p. 39, 56)
DM-238	7/21/93	whether a facility may terminate an employee if criminal convictions of certain offenses are found (p. 77)
DM-236	7/20/93	whether a city may prohibit private companies from random drug testing (p. 42, 62)
DM-230	6/23/93	whether a Justice of the Peace may dismiss a complaint against a defendant who has not successfully completed a driving course (p. 57, 70)
DM-225	6/8/93	liability for costs of health care to indigent county inmates (p. 73)
DM-222	5/13/93	whether a child support obligee may modify a child support order to corporate payments through a district clerk (p. 67)
DM-212	4/12/93	whether police officers may serve as part-time school security guards (p. 56, 77)
DM-200	1/28/93	truancy cases in juvenile courts regarding hearings for waiving jurisdiction, appointment of counsel, and code classification of tardiness (p. 39, 44, 48)
DM-179	11/10/92	whether time spent in drug rehabilitation centers qualifies as satisfaction of sentencing time (p. 39, 42)
DM-176	10/22/92	whether driver's license renewal forms may ask questions about substance abuse (p. 42)
DM-147	8/24/92	whether the Interstate Compact on Juveniles requires probation officers to supervise delinquents not defined under the Texas Family Code, Chapter 51 (p. 33)

DM-131	6/29/92	whether a hospital district may lease itself for a private juvenile drug facility (p. 73)
DM-123	6/9/92	whether a commissioners court may require an extra \$10.00 court fee for criminal offenses (p. 77)
DM-119	5/12/92	authority of the Commission on Jail Standards to create rules regarding temporary emergency housing of county inmates (p. 77)
DM-115	5/4/92	authority of the Texas Alcoholic Beverage Commission to adopt a rule revoking the permits of licensees who sell alcohol to minors (p. 42)
DM-111	4/20/92	whether the county sheriff or court may choose, schedule physicians to perform county jail treatment (p. 57, 74)
DM-103	4/10/92	whether a juvenile board may order an increase in compensation pay to its county judge members (p. 39, 57)
DM-97	3/13/92	whether a child is “legitimized” when a man voluntarily establishes paternity for a child born out of wedlock (p. 68)
DM-87	2/6/92	responsibility for transporting juveniles between juvenile court and county detention center; related issues (p. 57, 72)
DM-86	2/6/92	sheriff’s responsibility regarding private detention facilities operated under a county contract (p. 35, 57)
DM-79	1/30/92	whether a juvenile board may hire or discharge department employees after it has employed a chief probation officer (p. 39)
DM-77	1/23/92	sheriff’s jurisdiction concerning arrests (p. 57)
DM-71	12/31/91	authority of public housing authority to regulate tenants’ firearms (p. 78)
DM-56	11/9/91	authority of a school district to enact and enforce a tobacco-free policy (p. 48)
DM-45, A, B	9/20/91	whether an amendment to the Code of Criminal Procedure regarding the mandatory time an inmate must serve prior to parole is retroactive (p. 33)
DM-38	9/10/91	whether persons ages 18-21, under TYC supervision, may be detained in juvenile detention facilities (p. 35)
DM-24	5/17/91	whether detention centers, etc., are “jails,” cell space, rooms, and related issues (p. 35)
DM-9	3/22/91	disclosure of juvenile record information (p. 19)

Juvenile Policy

Letter Opinions by Date

OPINION #	DATE	RE:
LO-98-125	12/22/98	whether an out-of-state juvenile adjudicated delinquent for a sexual offense and transferred to Texas for probation is required to register as a sex offender (superseded by Art. 62.021, Code of Criminal Procedure) (p. 33)
LO-98-122	12/21/98	whether Health and Safety Code, § 673.002, which requires the commissioner of health to review and authorize payment by the comptroller for autopsies performed on children under the age of two years, has been superseded by Chapter 264, subchapter F of the Penal Code (p. 74)
LO-98-111	11/25/98	regarding the constitutionality of municipal juvenile curfew ordinance (p. 39)
LO-98-073	8/28/98	whether district court judge is a member of the Henderson County Juvenile Board (p. 57)
LO-98-069	8/21/98	regarding the jurisdiction of juvenile court after expiration of deferred adjudication probation term (p. 65)
LO-98-027	3/26/98	whether a person under the age of 21 may be prosecuted for the offense of driving while intoxicated (p. 70)
LO-98-002	2/5/98	whether the Education Code prohibits the sale of alcoholic beverages at non-school events held at a student activities complex owned by an independent school district (p. 52)
LO-97-074	8/20/97	whether a juvenile court may assess a fee for court costs in a modification of disposition order, when a modification hearing has been waived (p. 65)
LO-97-067	7/8/97	whether a retired judge is precluded from accepting appointment as a guardian ad litem (p. 40, 65)
LO-97-065	7/7/97	whether a county may pay legal expenses incurred by sheriffs defending themselves in a prosecution on criminal charges (p. 48) (Overruled, to the extent inconsistent, by DM-488, Nov. 12, 1998)
LO-97-063	7/7/97	whether the commissioners court in a county with a public defender's office must provide funding to pay court-appointed attorneys who are not members (p. 40, 58)
LO-97-049	5/9/97	whether a school district may pay legal defense fees incurred by an employee in criminal proceedings (p. 52) (Overruled, to the extent inconsistent, by DM-488, Nov. 12, 1998)

LO-97-042	4/24/97	whether drivers who failed to yield right of way are eligible for a driving safety course; related questions under the Transportation Code (p. 70)
LO-97-032	4/10/97	whether a county may accept gifts from an alternative dispute resolution center (p. 58)
LO-97-025	3/14/97	collection of security fees for defendants convicted in misdemeanor cases (p. 58)
LO-97-024	3/14/97	whether a school district may grant monetary awards to seniors who meet certain criteria; drug-awareness programs (p. 52)
LO-97-010	2/20/97	whether longevity pay and benefits are included for Texas Youth Commission teachers (p. 35)
LO-97-006	2/16/97	constitutionality of the fingerprint requirement for original, renewal, or duplicate driver's license (p. 70)
LO-96-150	12/23/96	whether protesters outside a crack house are in violation of the Penal Code (p. 78)
LO-96-144	12/19/96	proper jurisdiction in Kerr and Lavaca counties with regard to possession, consumption, and purchase of alcohol by minors (p. 41, 58)
LO-96-140	12/19/96	whether calling, committing a false alarm is a crime of "moral turpitude" (p. 78)
LO-96-134	12/12/96	creation of alcohol-free school zones (p. 52)
LO-96-131	12/6/96	filing fees for an occupational driver's license after a DWI conviction (p. 70)
LO-96-126	11/7/96	eligibility for mandatory release of inmates convicted of indecency with a child (p. 46)
LO-96-118	10/30/96	whether a county may charge a defendant for the installation of a motor vehicle interlock device that measures his/her alcohol level (p. 58, 70)
LO-96-102	8/23/96	effect of Health and Safety Code, Chapter 611, on whether a health professional may disclose confidential patient information under subpoena (p. 19, 74)
LO-96-091	8/20/96	whether an assistant juvenile probation officer may simultaneously be a constable (p. 34, 59)
LO-96-078	7/26/96	whether a justice of the peace may serve as a county juvenile law master (p. 59, 78)
LO-96-075	7/18/96	attorney compensation for representing a defendant with a protective order as a result of family violence (p. 78)
LO-96-059	5/24/96	whether criminal trespassing can occur on a public bus (p. 46)

LO-96-046	5/6/96	required frequency of county jail inspections (p. 59)
LO-96-037	3/29/96	whether the Department of Protective and Regulatory Services is responsible for funeral expenses of children under their care (p. 78)
LO-96-034	3/21/96	whether a peace officer may request a polygraph exam for one who seeks to file a complaint of sexual assault (p. 79)
LO-96-033	3/14/96	whether one may simultaneously be a peace officer and a community supervision officer (p. 34, 79)
LO-96-021	2/29/96	authority of a private security guard to detain, arrest someone who commits a crime in the guard's presence (p. 79)
LO-96-009	1/29/96	whether Penal Code, section 46.0035, prohibits handguns on public school or university premises during sporting, extracurricular events (p. 53)
LO-95-083	12/14/95	county payment of court costs when a ward's estate cannot afford them (p. 59)
LO-95-082	12/14/95	whether a parent's grievance to a school board may be heard openly; Open Meetings Act (p. 53)
LO-95-081	12/14/95	whether the filing of an affidavit to support issuance of an arrest warrant by a magistrate stops the running of the statute of limitations on Class A or Class B misdemeanors (p. 40)
LO-95-051	8/17/95	whether a county must pay fees incurred by a county-appointed legal representative (p. 59)
LO-95-037	5/26/95	whether high school dropouts or graduates may re-enroll to take cosmetology classes (p. 53)
LO-95-034	5/26/95	constitutionality of video cameras in locker rooms (p. 53)
LO-95-030	5/4/95	whether the transfer of juvenile cases requires the consent of the receiving courts (p. 40)
LO-95-014	3/21/95	whether the Texas Department of Criminal Justice may release inmate information to the Texas Council on Family Violence (p. 19)
LO-95-004	3/3/95	whether the Children's Trust Fund (used for child abuse and neglect prevention) may be abolished (p. 79)
LO-94-091	12/14/94	whether a commissioners court may have a non-binding referendum on the ballot regarding the age of criminal responsibility (p. 79)
LO-94-088	12/8/94	special tax for operation of a juvenile detention facility (p. 35)
LO-94-065	9/9/94	whether a sheriff may transport children to juvenile court (p. 59, 72)

LO-94-062	7/29/94	state compensation with regard to transportation of felons from county jail to boot camps, drug rehabilitation programs (p. 60, 72)
LO-94-058	7/20/94	authority of city police over truancy (p. 44, 62)
LO-94-056	6/17/94	whether a city ordinance may regulate a child's discharge of firearms (p. 46, 63)
LO-94-039	4/26/94	whether the term "child" in Government Code, section 573.024 includes emancipated children; nepotism laws (p. 79)
LO-94-030	3/24/94	compensation for school district employees who were assaulted on the job (p. 54)
LO-94-027	3/4/94	use of privately owned facilities that discriminate against minority student athletes for extracurricular activities (p. 54)
LO-93-100	11/10/93	which health care services in Karnes County are responsible for indigent inmates in the county jail (p. 60, 74)
LO-93-095	10/20/93	constitutionality of dress, hair code policies for males on probation (now community supervision) (p. 34)
LO-93-094	10/20/93	fees for issuing, "serving" a writ of income withholding for child support (p. 68)
LO-93-088	10/7/93	whether a criminal record is subject to expunction from Child Protective Services agency files (p. 20)
LO-93-082	9/10/93	whether the attorney general may contract a "statewide organization" to administer, fund a Court Appointed Special Advocate program (p. 80)
LO-93-076	9/3/93	whether the Family Code requires the Department of Public Safety to destroy or seal juvenile crime records prior to 1975 (p. 20)
LO-93-061	8/11/93	whether the word "emancipation" is in the Family Code; whether unemancipated minors may register vehicles in their names (p. 71, 80)
LO-93-046	6/8/93	whether the Parrie Haynes Ranch, willed to state orphans, is under the asylum fund provision of the state Constitution (p. 80)
LO-93-038	5/18/93	whether a juvenile court may use county space for a processing office (p. 40)
LO-92-067	10/12/92	transportation of prisoners between the county of arrest and the county where warrant was issued (p. 60, 72)
LO-92-057	9/29/92	minimum age requirement for acquisition of tattoos (p. 80)
LO-92-039	8/20/92	whether a psychologist's information regarding a parent-child relationship is exempt from disclosure in court (p. 20, 74)

LO-92-023	7/20/92	jurisdiction of justice courts in misdemeanor cases (p. 65) (Overruled by DM-0277, Dec. 20, 1993)
LO-92-014	6/3/92	whether the Taylor county court has jurisdiction over juvenile cases (p. 66)
LO-92-003	3/30/92	whether a juvenile may be held in a detention facility outside the county (p. 36, 60)

Open Records Decisions by Date

OPINION #	DATE	RE:
2001-6133	12/31/01	whether an incident report involving a car allegedly stolen by a juvenile is subject to disclosure even if the name of the juvenile is withheld (p. 46)
2001-5795	12/12/01	whether information about the death of a juvenile in a detention facility can be disclosed under the child abuse investigation provision of the Family Code (p. 36)
2001-5349	11/16/01	whether information in the DPS gang database is subject to disclosure as public information (p. 20)
2001-5316	11/16/01	whether a juvenile has a right to see a law enforcement incident report that names him as a suspect (p. 20)
2001-4990	10/31/01	whether records of certifications to criminal court in the possession of the Texas Juvenile Probation Commission are confidential (p. 21)
2001-4867	10/25/01	whether a law enforcement incident report identifying a child crime victim is confidential under the juvenile confidentiality provision (p. 21)
2001-4805	10/23/01	whether the juvenile confidentiality provision applies to a law enforcement incident report about conduct by an individual while younger than ten years of age (p. 21)
2001-4788	10/22/01	whether Child Protective Services is entitled to see a law enforcement incident report concerning a juvenile (p. 21)
2001-4680	10/16/01	whether an incident report dealing with conduct by a 17-year-old is subject to disclosure under the Family Code (p. 21)
2001-4660	10/15/01	whether juvenile records, prior to 1995, lose their confidentiality once the juvenile is certified to criminal court for prosecution as an adult (p. 22)
2001-4438	10/3/01	whether a juvenile, through his or her attorney, is entitled to see alcohol blood test results, and whether others are entitled to see those results (p. 22)
2001-4279	9/24/01	whether a parent is entitled to see a police incident report concerning his or her child (p. 22)
2001-4297	9/23/01	whether information concerning juvenile police informants is subject to disclosure (p. 22)

2001-4231	9/20/01	whether juvenile records created by a municipal court but maintained by the city attorney are subject to disclosure (p. 23)
2001-3866	8/31/01	whether juvenile probation department records concerning visitation with a named juvenile in detention are subject to disclosure (p. 23)
2001-3350	8/1/01	whether the tape of a 9-1-1 call is excepted from disclosure as juvenile information even though the juvenile in question is dead (p. 23)
2001-2777	6/28/01	whether the litigation exception to the Public Information Act applies to excuse disclosure of information in the requestor's juvenile probation department personnel file (p.23)
2001-1859	5/7/01	whether information in the FBI National Crime Information Center database is subject to disclosure (p. 23)
2001-1735	4/27/01	whether law enforcement record relating to investigation of child abuse or neglect is subject to disclosure (p. 24)
2001-1704	4/26/01	whether criminal history information in the possession of a law enforcement agency is subject to disclosure under the common law right of privacy and whether reports of runaway children are subject to disclosure under §58.007 of the Family Code (p. 24)
2001-1644	4/24/01	whether juvenile incident reports between 1/1/96 and 9/1/97 must be disclosed if the statute of limitations has run (p. 24)
2001-1581	4/20/01	whether tapes of school board executive sessions must be disclosed under FERPA to the parent of children being discussed (p. 24)
2001-1563	4/19/01	whether a public housing authority is entitled to a juvenile incident report (p. 24)
2001-1373	4/5/01	whether a juvenile offense report sent to Crime Victims' Compensation Program remains confidential (p. 25)
2001-1347	4/4/01	whether incident reports involving juvenile misconduct and the tape of a 9-1-1 call are excepted from disclosure (p.25)
2001-1088	3/20/01	whether a police incident report naming an adult suspect but also naming a juvenile witness and complainant is confidential under the juvenile records provision (p. 25)
2001-0779	3/1/01	whether an incident report concerning a juvenile offense retains its non-public status even after the juvenile is certified to criminal court and convicted as an adult (p. 25)
2001-0528	2/12/01	whether juvenile probation department records are excepted from disclosure by the judiciary exception to the Public Information Act (p. 25)

2001-0354	1/30/01	whether police department records of an internal affairs investigation into the arrest of a juvenile are required to be disclosed under the Public Information Act (p. 26)
2001-0160	1/16/01	whether incident reports of minor traffic accidents involving juveniles are excepted from disclosure under the Public Information Act (p. 26)
2000-0035	1/5/00	whether the identity of a child victim in an auto accident is protected from public disclosure (p. 26)
ORD-659	8/5/99	whether communications made in a victim-offender mediation session are confidential under Section 154.073 of the Civil Practice and Remedies Code (p. 27)
99-1068	4/22/99	whether individual probation records kept by a community supervision department are subject to the Open Records Act [<i>See also</i> , 99-1345 (5/17/99)] (p. 26)
99-0005	1/6/99	whether police report of a sexual assault of a child is protected from public disclosure (p. 27)
ORD-650	11/18/96	whether one law enforcement agency can release information to another without the consent of the individual under investigation (p. 27)
ORD-646	8/16/96	whether individual probation records kept by a community supervision and corrections department are subject to the Open Records Act (p. 27)
ORD-645	5/29/96	duties and responsibilities of law enforcement agencies, school districts to release sex-offender information (p. 28)
99-0696	3/11/99	duties and responsibilities of law enforcement agencies to release sex offender registration information (p. 27)
ORD-644	5/29/96	whether juvenile law enforcement records remain confidential; repeal of Family Code, section 51.14 (See also, 99-0005 (1/6/99), 99-0304 (2/2/99), 99-1404 (5/20/99), 99-2134 (7/29/99), 99-2715 (9/27/99), 99-2893 (10/11/99), 99-3105 (11/3/99), 99-3194 (11/10/99), and 99-3481 (12/3/99) on this issue) (p. 28)
ORD-634	12/4/95	whether school districts may deny requests for information classified as “education records” (p. 28)
ORD-628	9/12/94	whether the identities of juvenile victims of crime or accidents are protected from public disclosure (p. 29)
ORD-618	9/9/93	whether the Department of Public Safety may disclose traffic conviction information in driver’s license files (p. 29)
ORD-616	8/13/93	whether a mug shot is subject to public disclosure (p. 29)

ORD-612	12/30/92	whether arrest and offense reports filed with state university campuses are exempted from disclosure (p. 29)
ORD-611	12/30/92	whether documents regarding a police department's family violence investigation are exempted from disclosure (p. 30)
ORD-597	11/27/91	whether the front page of a sheriff's offense report may be exempted from disclosure (p. 30)
ORD-596	10/22/91	whether the Health and Safety Code controls the release of official birth certificates for adoptees (p. 30)
ORD-595	10/17/91	scope of confidentiality of peer review documents, right of access regarding the Fort Worth State School (p. 30)
ORD-591	7/10/91	whether a patient (child) has the right to see peer review documents relating to him/her (p. 30)
ORD-587	4/18/91	confidentiality of the investigation of a child abuse complaint at a day care facility licensed by the Texas Department of Human Services (p. 31)
ORD-584	584	restrictions on the release of client information by the Texas Department of Human Services (p. 31)

Juvenile Policy Topic: Procedure - Juvenile Records & Information

DM-435: Destruction of Juvenile Records

The Family Code, section 58.001(c), requires a law enforcement agency to destroy all information relating to a child who has been taken into custody if the child is not referred to juvenile court within ten days, unless the child is placed in a first offender program or on informal disposition. In the event a child is placed in a first offender program or on informal disposition, the law enforcement agency must destroy all information relating to the child created pursuant to the arrest if the child successfully completes the program or informal disposition.

Subsection (c) requires the destruction of all information relating to a child created pursuant to an arrest and in the possession of a law enforcement agency regardless of its form, including information in computerized form. Subsection (c) requires the destruction only of information relating to the child created pursuant to the arrest and does not necessarily require the destruction of entire documents. The Family Code, section 58.007, requires that law enforcement records and files concerning a child “be kept separate from adult files and records.” It would be reasonable for a law enforcement agency to destroy information relating to a child created pursuant to an arrest by the end of the calendar year in which it is collected. Information relating to a child who has completed a first offender program, however, must be retained for 90 days after the date the child completes the program.

DM-353: The Brady Bill and Medical Record Confidentiality

The federal Brady Act, by directing certain law enforcement officers to research “available” records in order to determine the lawfulness of a person’s obtaining a handgun, does not require or authorize the Department of Mental Health and Mental Retardation to disclose client records which are otherwise confidential and unavailable to such officers under state law. This opinion does not address which particular records are or are not available to such officers under state law.

DM-334: Accessing Juvenile Records for Civil Trials

In some circumstances, the public policy in favor of compensating property owners for the malicious destruction of their property may justify a juvenile court’s determination that a victim of vandalism seeking access to court files and records under section 51.14(a)(4) of the Family Code for use in a civil action for damages caused by the vandalism is a “person . . . having a legitimate interest” in a juvenile proceeding.

The provision in section 51.14(a) providing that the “files and records of a juvenile court...are open to inspection only by [the persons and entities set forth in subsection (a)]” means that only those persons and entities may inspect juvenile files and records, not that those persons and entities may only inspect juvenile files and records. A grant of access to records under section 51.14(a)(4) does not include permission to copy the records unless the public interest requires that the requestor have copies.

DM-294: Law Enforcement Agencies and School Information

Article 15.27 of the Code of Criminal Procedure authorizes a law enforcement agency to communicate to the proper school official the nature of the charges against an arrested or detained student, the identities of any alleged victims who are students or school personnel, and all other information about the arrest or detention of a student that will enable the school official to take appropriate action to prevent violence, protect students and school personnel, and further educational purposes.

DM-9: Disclosure of Juvenile Record Information

A person who has been adjudicated delinquent on the basis of violating a penal law of the grade of felony and whose records may not be sealed pursuant to section 51.16(h) of the Family Code is not entitled to state on an application for employment, information, or licensing that he has not been the subject of a proceeding under Title 3 of the Family Code.

LO-96-102: Subpoenaed Health Professionals and Disclosure

A psychologist is authorized to disclose confidential information about a patient in a judicial or administrative proceeding where the court or agency has issued an order or subpoena without receiving a written waiver of confidentiality from the patient or patient's representative. A rule of the Board of Examiners of Psychologists, interpreted by the board as requiring such a waiver, is invalid to the extent of inconsistency with the exception to the confidentiality requirement found in section 611.006(a)(11) of the Health and Safety Code. If a psychologist has received a subpoena for patient mental health records he or she believes are privileged by rule 510 of the Rules of Evidence, he or she may raise the claim of privilege under applicable provisions of the Rules of Civil Procedure. Although it may be advisable for a psychologist to notify a patient that his records have been subpoenaed, we cannot determine that the action would be either necessary or sufficient to protect the psychologist from liability in tort in the event that the patient's privileged mental health information is disclosed in a judicial proceeding.

LO-95-014: TDCJ Releasing Information to TCFV

The Texas Council on Family Violence, Inc. (TCFV), a nonprofit corporation, is not a state agency. The disclosure of confidential information by the Texas Department of Criminal Justice (TDCJ) to the TCFV would not be an authorized interagency sharing of data between state agencies.

Senate Concurrent Resolution No. 26 of the 72nd Legislature does not establish the Texas Council on Family Violence, Inc., as an agent of the governor for the purpose of gathering confidential information.

LO-93-088: Removing Criminal Records with Expunction Orders

The provisions of Chapter 55 of the Code of Criminal Procedure, authorizing the expunction of certain arrest records, control over the provisions of the Open Records Act, V.T.C.S., article 6252-17a (now codified at Chapter 552, Government Code), to the extent they conflict. After entry of an expunction order, the release, dissemination, or use of the expunged records and files for any purpose is prohibited. On receipt of an expunction order, an official or agency named in the order must return all records and files subject to the order to the court, or, if removal is impracticable, obliterate all portions of the records or files that identify the petitioner.

Since the Texas Department of Protective and Regulatory Services is not named in an expunction order applicable to an arrest record in its files, it is not required or authorized by Chapter 55 of the Code of Criminal Procedure to remove the arrest record from its files. It may, however, be able to arrange for its destruction pursuant to section 441.035(e) of the Government Code.

LO-93-076: DPS and Destruction of Juvenile Records

The Department of Public Safety (DPS) is authorized to maintain and disseminate information relating to juvenile offenses that came into its possession prior to the enactment of Chapter 51 of the Family Code in 1973. Section 51.16 of the Family Code does not require the department to seal or destroy juvenile records.

LO-92-039: Psychologists' Information in Courts

Pursuant to Texas Rule of Civil Evidence 510(d)(6), a licensed psychologist may disclose privileged information if the information is relevant in any suit affecting the parent-child relationship. The Attorney General's Opinion Committee will not issue an opinion that effectively overrules a judicial decision.

OR2001-5349: Disclosure of Information in the DPS Gang Database

Information in the DPS gang database is not subject to disclosure as public information. Under §552.101 of the Government Code, DPS must withhold the compilations of criminal history records, the juvenile offender information, and the intelligence information pertaining to criminal street gangs.

OR2001-5316: Disclosure of Incident Report Dealing with Juvenile

A juvenile has no right to see a law enforcement incident report that names him as a suspect. §58.007 of the Family Code provides that juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential. DPS must withhold the requested information from disclosure pursuant to §552.101 of the Government Code and in conjunction with §58.007(c) of the Family Code.

OR2001-4990: Disclosure of Certification Records in Possession of TJPC

Records of certifications to criminal court in the possession of the Texas Juvenile Probation Commission are subject to §58.005(a) of the Family Code and thus confidential. The requested information is part of the statistical data on juvenile offenders the commission has collected from juvenile probation departments across the state. Since the requester is not included among the individuals entitled to this information under §58.005, the information must be withheld from disclosure under §552.101 of the Government Code.

OR2001-4867: Disclosure of Incident Report Identifying Child Crime Victim

A law enforcement incident report identifying a child crime victim is not confidential under the juvenile confidentiality provision of §58.007(c) of the Family Code. However, this section applies only to juvenile offenders and not to juvenile crime victims. Therefore, the requested information must be withheld pursuant to §552.101 of the Government Code in conjunction with §261.201 of the Family Code.

OR2001-4805: Disclosure of Incident Report About an Individual Under Ten

The juvenile confidentiality provision of §58.007 of the Family Code does not apply to a law enforcement incident report about conduct by an individual while younger than ten years of age, because such a person is not a “child” as defined by §51.02 of the Family Code.

OR2001-4788: Disclosure of Incident Report about a Juvenile to CPS

CPS is not entitled to see a law enforcement incident report concerning a juvenile. Since the juvenile conduct occurred after September 1, 1997, §58.007(c) of the Family Code prohibits the public disclosure of the report. Therefore, the report must be withheld from disclosure based on §552.101 of the Government Code in conjunction with §58.007 of the Family Code.

OR2001-4680: Disclosure of Incident Report about a 17-Year-Old

An incident report dealing with conduct by a 17-year-old is not confidential under the Family Code because the suspect is not a juvenile. Because the offender identified in the submitted information was 17 years old at the time of the alleged offense, and therefore was not a “child” as defined by §51.02 of the Family Code, §58.007(c) of the Family Code is inapplicable. (*See also*, OR2001-0197 on this same issue)

OR2001-4660: Disclosure of Juvenile Records after Certification to Adult Criminal Court

Juvenile records lose their confidentiality once the juvenile is certified to criminal court for prosecution as an adult. Law enforcement records pertaining to juvenile conduct that occurred prior to the effective date of the repeal of §51.14 of the Family Code continue to be confidential under that section. However, since the juvenile defendant in this case was tried as an adult in accordance with §54.02 of the Family Code, the resulting criminal trials were not proceedings subject to the provisions of the Family Code. Accordingly, the requested information is not exempt from disclosure under §552.101 of the Government Code.

OR2001-4438: Disclosure of Alcohol Blood Test Results to Juvenile’s Attorney

A juvenile, through his attorney, is entitled to see alcohol blood test results, but others are not entitled to see those results. §58.007 of the Family Code, dealing with confidentiality of juvenile records, conflicts with the express language in §724.018 of the Transportation Code providing for release of the specimen analysis to the person or the person’s attorney. Because §724.018 specifically applies to specimen analyses, that provision prevails over §58.007 of the Family Code and therefore the results must be disclosed to the requestor.

OR2001-4486: Disclosure of Runaway Report to a Parent

A parent who filed runaway reports on her son is not entitled to see those reports that were filed prior to January 1, 1996. Law enforcement records pertaining to conduct occurring before January 1, 1996, are governed by the former §51.14(d) of the Family Code. Since the records at issue concern juvenile conduct that occurred prior to January 1, 1996, they are confidential under former §51.14(d) and must be withheld from disclosure pursuant to §552.101 of the Government Code.

OR2001-4279: Disclosure of Incident Report to a Parent

A parent is not entitled to see a police incident report concerning his or her child since parents have not special right to such information under the Public Information Act. Juvenile law enforcement records for conduct occurring after September 1, 1997, are governed by §58.007 of the Family Code. The information must be withheld from disclosure under §552.101 of the Government Code in conjunction with §58.007 of the Family Code. (*See also*, OR2001-0804)

OR2001-4297: Disclosure of Information re: Juvenile Police Informants

Information concerning juvenile police informants is excepted from disclosure under Rule 508 of the Texas Rules of Evidence, which reads: “The United States or a state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

OR2001-4231: Disclosure of Juvenile Records Maintained by Municipal Court Prosecutor

Juvenile records created by a municipal court but maintained by the city attorney are not public records because they are made confidential by §58.007(b) of the Family Code. The records at issue were generated and maintained as part of a criminal proceeding involving a juvenile. Since none of the exceptions in §58.007(b) apply the information must be withheld from disclosure pursuant to §552.101 of the Government Code in conjunction with §58.007(b).

OR2001-3866: Disclosure of Juvenile Probation Department Visitation Records

Juvenile probation department records concerning visitation with a named juvenile who was in detention are not public records under the Public Information Act. Since none of the confidentiality exceptions in §58.007(b) of the Family Code apply, the department must withhold the records from public disclosure under §552.101 of the Government Code.

OR2001-3350: Disclosure of 9-1-1 Call about School Shooting Involving a Juvenile

The tape of a 9-1-1 call is not subject to disclosure as juvenile information even though the juvenile in question is dead. Since the conduct occurred after September 1, 1997, none of the exceptions in §58.007 of the Family Code apply. Accordingly, the submitted 9-1-1 tape is confidential under §58.007 and must be withheld from disclosure under §552.101 of the Government Code.

OR2001-2777: Disclosure of Requestor's Personnel File by Juvenile Probation Department

The litigation exception to the Public Information Act does not apply to excuse disclosure of information in the requestor's juvenile probation department personnel file. §58.007 of the Family Code does not apply, because none of the information involves a public disclosure of juvenile offender records. Therefore, the information in the personnel file must be released.

OR2001-1859: Disclosure of Information in FBI NCI Center Database

Information in the FBI's NCIC database may not be disclosed under the Texas Open Records Act. The information involves juvenile conduct occurring after September 1, 1997 and is confidential pursuant to §58.007(c) of the Family Code and must therefore be withheld pursuant to §552.101 of the Government Code. This opinion also held that driver's license information and some social security information may not be disclosed.

OR2001-1735: Disclosure of Police Record re: to Investigation of Child Abuse or Neglect

A law enforcement record that deals with the death of a child under circumstances that might have constituted abuse or neglect is exempt from disclosure under the Open Records Act by virtue of a confidentiality provision contained in Ch. 261 of the Family Code. Accordingly, the information must be withheld from disclosure under §552.101 of the Government Code in conjunction with §261.201 of the Family Code.

OR2001-1704: Disclosure of Criminal History Records and Runaway Children Reports

Criminal history information in the possession of a law enforcement agency is not subject to disclosure under §552.101 of the Government Code because of the common law right of privacy and reports of runaway children are not subject to disclosure under §58.007 of the Family Code.

OR2001-1644: Disclosure of Juvenile Incident Reports Between 1/1/96 and 9/1/97

A law enforcement report concerning a juvenile for an incident that occurred on or after January 1, 1996, but before September 1, 1997, is not confidential under juvenile law. If the statute of limitations for the offense being investigated has run, as in these cases, then the record is not protected from disclosure by the law enforcement privilege (§552.101 of the Government Code) and must be released.

OR2001-1581: Disclosure of Tape Recording of School Board Executive Session

Although Texas law makes tapes of school board executive sessions confidential, federal law requires that the portion of the tape in which a requestor's children are being discussed must be disclosed. Because the requestor is the parent of the district students who are the subjects of the tape recording, the tape recording is not excepted from disclosure under FERPA and must be provided to the requestor.

OR2001-1563: Disclosure of Juvenile Incident Report to Public Housing Authority

A public housing authority is not entitled to receive a law enforcement incident report involving a juvenile under the Open Records Act. Since the authority is not one of the enumerated entities entitled to inspect juvenile records pursuant to §58.007(e) of the Family Code, the requested offense report is confidential under §58.007(c). Therefore, the offense report must be withheld from the authority under §552.101 of the Government Code.

OR2001-1373: Disclosure of Juvenile Offense Report Sent to Crime Victims' Compensation Program

An offense report in which the subject is a juvenile that was sent by a police department to the Crime Victims' Compensation Program of the Attorney General's Office remains confidential under §58.007 of the Family Code. Since the information involves juvenile conduct that occurred after September 1, 1997, the OAG must withhold the offense reports under §552.101 of the Government Code in conjunction with §58.007(c) of the Family Code.

OR2001-1347: Disclosure of Incident Reports and 9-1-1 Tape Involving Juvenile Misconduct

Incident reports that identify juvenile suspects are excepted from disclosure under the Public Information Act and the tape of a 9-1-1 call is excepted from disclosure because disclosure would impede an ongoing investigation. Information regarding juvenile conduct that occurred after September 1, 1997, is confidential under §58.007(c) of the Family Code and must withheld from disclosure under §552.101 of the Government Code.

OR2001-1088: Disclosure of Incident Report Identifying a Juvenile as a Witness or Complainant

A police incident report that names an adult suspect but also names a juvenile witness and complainant is not confidential under the juvenile records provision of §58.007 of the Family Code. §58.007 does not apply where the information in question involves only a juvenile complainant or witness and not a juvenile offender or suspect. Since the suspect in this case was 17 at the time of the incident, the information may not be withheld from disclosure.

OR2001-0779: Disclosure of Juvenile Incident Report After Certification to Criminal Court

An incident or offense report concerning a juvenile offense retains its non-public status even after the juvenile is certified to criminal court and convicted as an adult. Because the records pertaining to the murder investigation concern a “child” for purposes of the Family Code, the records must be withheld in their entirety pursuant to §58.007(c) of the Family Code.

OR2001-0528: Disclosure of Files Maintained by a Juvenile Probation Department

All files maintained by a juvenile probation department are excepted from required disclosure by the judiciary exception to the Public Information Act. The information at issue involves juvenile conduct that occurred after September 1, 1997 and is confidential under §58.007 of the Family Code. The information must be withheld from disclosure under §552.101 of the Government Code.

OR2001-0354: Disclosure of Internal Affairs File Involving Juvenile

Police department records of an internal affairs investigation into the arrest of a juvenile are not required to be disclosed under the Public Information Act. The information constitutes law enforcement records regarding juvenile conduct that occurred after September 1, 1997, and is therefore confidential under §58.007 of the Family Code. However, information in a civil service file concerning the same investigation must be disclosed.

OR2001-0160: Disclosure of Minor Traffic Accident Reports Involving Juveniles

Police incident reports of minor traffic accidents involving juveniles are not exempt from disclosure by the juvenile records exception to the Public Information Act. These types of reports are not covered by the juvenile confidentiality provision of §58.007 of the Family Code and may not be withheld from disclosure.

OR2000-0035: Disclosure of Identity of Child Victim in Auto Accident

An accident report concerning the death of a minor child did not contain highly intimate or embarrassing facts about a person’s private affairs, such that its release would be highly objectionable to a reasonable person. The information is not protected under section 58.007(c) of the Family Code, which applies only to juvenile offenders and not to child victims. In this situation the minor’s name is not protected by the common-law right of privacy and may not be withheld under § 552.101 of the Government Code.

OR99-1068: Community Supervision and Corrections Department Records

The Harris County Juvenile Probation Department received a request for all records pertaining to the requestor's son. The records were designated as the "Juvenile File," the "Institutional File," and the "Medical File." Since the requestor is not among the listed individuals authorized to obtain the information at issue under section 58.005(a) of the Family Code, the information in the "Institutional File" must be withheld absent authorization from the juvenile court having jurisdiction over the child. Similarly, absent "leave of the juvenile court," the "Juvenile File" information must be withheld pursuant to section 58.007(b) of the Family Code. The "Medical Files" are subject to the Medical Practice Act and may be released only if the release would be "consistent with the authorized purpose for which the information was first obtained." Otherwise, these records must also be withheld. (See also, OR99-1345 on this issue.)

OR99-0696: Release of Sex Offender Information

Chapter 62 of the Code of Criminal Procedure still prevails over § 58.007 of the Family Code and "clearly contemplates" that juvenile sex offenders will be subject to its provisions. Sex offender registration information is, with listed exceptions, public information. Art. 62.08(c) of the Code of Criminal Procedure provides that "a local law enforcement agency shall release public information described under subsection (b) to any person who submits to the authority a written request for the information." Open Records Letter No. 98-2573 (1998) is affirmed. (*See also*, OR99-1790)

OR99-0005: Disclosure of Identity of Child Sex Abuse Victim

An incident report pertaining to an investigation of the sexual abuse of a child must be withheld in its entirety pursuant to section 261.201 of the Family Code. Section 552.101 of the Government Code protects from public disclosure information made confidential by statute. The common-law right of privacy will also protect information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and is of no legitimate concern to the public.

ORD-659: Non-Confidentiality of Victim-Offender Mediation

The victim-offender mediation conducted by the Texas Department of Criminal Justice is not mediation as contemplated by Chapter 154 of the Civil Practice and Remedies Code, because the victim and offenders are engaged in a healing process, rather than attempting to resolve a dispute. Therefore, communications made during the mediation are not confidential under Section 154.073. However, the participant's communications and records of the victim-offender mediation may be protected from public disclosure by common-law privacy as encompassed by Section 552.101 of the Government Code.

ORD-650: Law Enforcement Agencies and Information Sharing

Absent federal authority, a city police department must not release to a federal law enforcement agency information made confidential under section 143.089(g) of the Local Government Code. A city police department should refer a request for information in a fire fighter's or police officer's personnel file to the civil-service director or the director's designee.

ORD-646: Community Supervision and Corrections Department Records

A community supervision and corrections department is a governmental body and is not part of the judiciary for purposes of the Open Records Act. Administrative records such as personnel files and other records reflecting the day-to-day management of a community supervision and corrections department are subject to the Open Records Act. On the other hand, specific records regarding individuals on probation and subject to the direct supervision of a court that are held by a community supervision and corrections department are not subject to the Open Records Act because such records are held on behalf of the judiciary.

ORD-645: Release of Sex Offender Information

Under article 6252-13c.1, V.T.C.S. (now codified at Chapter 62, Code of Criminal Procedure), all information contained in either an adult or juvenile sex offender's registration form and subsequently entered into the DPS data base is public information and must be released upon written request except for the registrant's photograph, social security number, driver's license number, numeric street address and telephone number, and any information that on its face would directly reveal the identity of the victim. Local law enforcement authorities are required under Chapter 62 to provide school district officials with "any information the authority determines is necessary to protect the public" regarding adult sex offenders. Upon receiving a written request for such information, the school district must release or withhold the requested information it receives in accordance with article 62.08 of Chapter 62 or other law, including the Open Records Act.

ORD-644: Confidentiality of Juvenile Law Enforcement Records

Section 58.007 of the Family Code does not make confidential juvenile law enforcement records concerning conduct occurring on or after January 1, 1996, that are maintained by law enforcement agencies. Other statutory provisions and exceptions to disclosure may apply to this information. Law enforcement records concerning conduct that occurred before January 1, 1996, are governed by former section 51.14(d) of the Family Code, which is continued in effect for that purpose. (*See also*, OR99-0005, OR99-0304, OR99-1404, OR99-2134, OR99-2715, OR99-2893, OR99-3105, OR99-3194 and OR99-3481 on this issue.)

Neither school district officials nor the general public are authorized to receive from local law enforcement authorities sex offender registration information pertaining to individuals whose reportable convictions or adjudication occurred prior to September 1, 1995.

ORD-634: School District Authority over "Education Records"

An educational agency or institution may withhold from public disclosure personally identifiable nondirectory information in "education records" as defined in the Family Educational Rights and Privacy Act of 1974 (FERPA), 20 U.S.C., section 1232g, which information is excepted from required public disclosure by Government Code, section 552.026, without the necessity of requesting an attorney general decision as to that exception. Furthermore, an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by Government Code, section 552.101 as "information considered to be confidential by law," without the necessity of requesting an attorney general decision as to that

exception. Finally, an educational agency or institution that is also state funded may withhold from public disclosure information that is excepted from required public disclosure by Government Code, section 552.114 as a “student record,” insofar as the “student record” is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.

An educational agency or institution that seeks an attorney general decision under the Texas Open Records Act should, before submitting “education records” to this office, either obtain parental consent to the disclosure of personally identifiable nondirectory information in the records or edit the records to make sure that they contain no personally identifiable nondirectory information.

ORD-628: Disclosure of Identities of Victims of Juvenile Crime

The identities of juvenile victims of serious sexual offenses are protected by common-law privacy as incorporated into section 552.101 of the Government Code. The identities of juvenile victims of other crimes and accidents are not protected by common-law privacy but may be protected by constitutional privacy, in some cases. Identities of juvenile crime victims contained within records of investigations of child abuse conducted pursuant to Chapter 34 of the Family Code are deemed confidential by law under section 34.08 of the Family Code and must be withheld from disclosure under section 552.101 of the Open Records Act. Section 51.14 of the Family Code prohibits disclosure of records of juvenile offenders; it does not apply to records concerning juvenile crime victims. Records identifying juvenile crime victims, whether as complainants or as witnesses, may be withheld, however, under section 552.108 of the Government Code, if it is shown that disclosure might subject the victim to possible intimidation or harassment or harm the prospects for future cooperation between witnesses and law enforcement officers.

ORD-618: DPS and Traffic Conviction Disclosures

A request to the Department of Public Safety for a list of individuals, including name, address, age, sex, and race, who were ticketed for traffic violations in specific cities is no longer available since the enactment of section 21(j)(3) of article 6687b, Texas Revised Civil Statutes (now codified at Chapter 521, Transportation Code). That section specifically governs this request for information because it requires the department to create “a class-type listing from the basic driver’s license record file.” Section 21(j)(3) provides that the department is not authorized to provide such a “class-type listing.” Thus, the statute effectively precludes access to this information, although it is not deemed confidential by law.

ORD-616: Mug Shot Public Disclosure

A “mug shot” taken in connection with an arrest for which the arrestee was subsequently convicted that does not relate to an active criminal investigation is not protected from public disclosure under section 3(a)(1) or section 3(a)(8) of the Texas Open Records Act, article 6252-17a, Texas Revised Civil Statutes (now codified at Chapter 552, Government Code).

ORD-612: Disclosure of State University Campus Crime Reports

The arrest and incident reports created and maintained by state university campus police departments are not education records within the meaning of the federal Family Educational Rights and Privacy Act, as amended by the Higher Education Amendments of 1992, 20 U.S.C., section 1232g(a)(4)(B)(ii), and therefore such police reports are not excepted from required public disclosure by Open

Records Act, section 14(e). Open Records Decision Numbers 342 (1982) and 205 (1978), ruling that such records are education records and excepted by section 14(e), are superseded. Such records are not “student records” within the meaning of Open Records Act, section 3(a)(14).

ORD-611: Disclosure of Family Violence Investigation Records

Records held by law enforcement agencies regarding violence between family members are not excepted as a matter of law from required public disclosure by section 3(a)(1) or section 3(a)(8) of the Open Records Act, V.T.C.S., article 6252-17a (now codified at Chapter 552, Government Code). To withhold records regarding violence between family members under the concept of common-law privacy, a governmental body must demonstrate that the information is highly intimate and embarrassing and of no legitimate public interest. To withhold records regarding violence between family members, other than the information generally found on the first page of the offense report, under section 3(a)(8), a law enforcement agency must demonstrate that the case is still under active investigation or that release of the information would unduly interfere with law enforcement or prosecution.

ORD-597: Disclosure and Sheriff’s Offense Reports

Article 3525-17a, section 3(a)(3) of the Open Records Act (now codified at Chapter 552, Government Code), cannot be invoked to withhold from public disclosure basic information in an offense report that has already been made available to the defendant in the criminal litigation.

ORD-596: Birth Certificate Releases for Adopted Children

In the absence of a court order, the Bureau of Vital Statistics may not disclose information in the original birth certificate of an adopted person for whom a supplementary birth certificate has been filed.

ORD-595: Fort Worth State School and Peer Review Confidentiality

Records generated by or for the Death Review Committee of the Fort Worth State School are within the scope of the confidentiality provision in the Medical Practice Act only when the records are generated by or for the committee for purposes of evaluating medical care at the state school. V.T.C.S., article 4495b, section 5.06(g). That confidentiality provision prevails over the right of access set out in article 5547-300, section 57(b) (now codified at Chapter 595, Health and Safety Code). Records that were reviewed by the Death Review Committee but were not generated by or prepared for the sole use of the committee are not made confidential by the Medical Practice Act.

ORD-591: Child Patients and Personal Documents

The main purpose of the confidentiality provision of section 161.032 of the Health and Safety Code and section 5.06(g) of article 4495b, V.T.C.S., the Medical Practice Act, is to encourage frank discussion, not to protect patient privacy. Therefore, a patient whose treatment is the subject of such records has no special right of access to such records under article 6252-17a, section 3B(a) of the Open Records Act (now codified at Chapter 552, Government Code).

ORD-587: Child Abuse Investigation Confidentiality

Section 34.08 of the Family Code prohibits public disclosure of records of child abuse or neglect investigations carried out by the Department of Human Services and maintained in the department's licensing files. Therefore, such records are excepted from public disclosure under article 6252-17a, section 3(a)(1) of the Open Records Act (now codified at Chapter 552, Government Code).

The confidentiality provisions of Family Code, section 34.08 are intended to protect law enforcement as well as privacy interests. Therefore, article 6252-17a, section 3B, of the Open Records Act cannot operate to give any individual a special right of access to information within the protection of section 34.08.

ORD-584: Releasing Information About a Client of DHS

The Open Records Act does not authorize the disclosure of any information about individual clients of the Aid to Families with Dependent Children and Medicaid programs administered by the Texas Department of Human Services (DHS).

Juvenile Policy Topic:

Procedure - Community Supervision and Parole

GA-0205: Juvenile Probation Department Authorized to Defer Prosecution for Certain Non-Violent Misdemeanors

A juvenile board may, without contravening the Texas Constitution, designate a juvenile probation department as the office with the authority to defer prosecution of a child referred to juvenile court for certain non-violent misdemeanor offenses.

JC- 0320: Fine and Deferred Adjudication Probation

A person who is sentenced to pay a fine and to deferred adjudication probation in a county criminal court is not entitled to an expunction of his or her arrest record under Art. 55.01 of the Code of Criminal Procedure.

JC-0129: Local Law Enforcement Required to Register Sex Offender with Reportable Adjudication

Nothing in Chapter 62 of the Code of Criminal Procedure precludes local law enforcement from registering as a sex offender a parolee who does not have a reportable conviction or adjudication, but is required to register as a condition of his parole. If the parolee must register under Chapter 62, the local law enforcement authority in the community in which the parolee intends to reside is required to register the parolee.

JC-0041: Peace Officer as Juvenile Probation Officer

Section 141.065 of the Human Resources Code prohibits a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, from simultaneously serving as a juvenile probation officer. It does not prohibit a mere licensee of the Texas Commission on Law Enforcement Officer Standards and Education from serving as a juvenile probation officer.

JC-0010: Local Law Enforcement Authority Not Obligated to Register Parolee as Sex Offender

A parole contract that obligates a parolee to “comply with Sex Offender Registration Program” does not in and of itself impose a duty on a local law enforcement authority to register the parolee as a sex offender under the Sex Offender Registration Program in Chapter 62 of the Code of Criminal Procedure.

DM-461: Supervision of Juvenile Convicted of Perjury

A community supervision and corrections department must supervise a juvenile defendant who has been convicted of perjury in a criminal proceeding and placed on community supervision by a criminal court.

DM-407: Allocation of Fees Paid by Defendant Placed on Community Supervision

The court with jurisdiction over a convicted defendant who is being placed on community supervision may, but need not, impose upon the defendant a requirement that the defendant pay court costs that are otherwise statutorily required. A trial judge may order that fees collected from the defendant be allocated entirely for the purposes set forth in art. 42.12, section 19 of the Code of Criminal Procedure as long as the fees do not exceed the maximum stated in that section.

DM-393: “Regular” or “Shock” Community Supervision

A person who has been on “regular” or “shock” community supervision is not eligible for a governor’s pardon after a judge discharges the person and, in so doing, also restores the person’s civil rights by setting aside the conviction and dismissing the charging instrument. A court has the inherent power to enter an order nunc pro tunc correcting the written entry of the court’s disposition of a case if, by clerical error, the entry does not correctly reflect the actual disposition rendered by the court.

DM-147: Probation Officers and ICJ Delinquent Supervision

By adopting the Uniform Interstate Compact on Juveniles (ICJ) (codified at Chapter 25, Family Code) the legislature authorized juvenile probation departments to extend their services to any case properly referred to them through the ICJ, regardless of the age of the individual so referred or the nature of the adjudicating offense. Once the State accepts supervision of an out-of-state delinquent juvenile under article VII of the ICJ, Family Code, section 25.08 requires juvenile probation officers to provide the mandated services.

DM-45, DM-45A, DM-45B: Mandatory Time Served Before Parole Eligibility

DM-45 was withdrawn by DM-45A. DM-45B held that the amendment to the Code of Criminal Procedure regarding the time prisoners must serve before becoming eligible for parole is not retroactive.

LO-98-125: Out-of-State Juvenile Probationer not required to Register as a Sex Offender in Texas

A youth adjudicated as delinquent in another State for a sex offense is not required to register in Texas as a sex offender under Chapter 62 of the Code of Criminal Procedure. A juvenile probation officer may not require a delinquent juvenile transferred to Texas for probation supervision pursuant to the Uniform Interstate Compact on Juveniles to register as a sex offender.

(Note: LO-98-125 has been superceded by art. 62.021 of the Code of Criminal Procedure, which requires persons who move to Texas and who are required to register under the laws of another state to also register under Texas law.)

LO-96-091: Probation Officers as Constables

A juvenile probation officer may not simultaneously hold the office of constable.

LO-96-033: Peace Officers as Community Supervision Officers

§76.005(c) of the Government Code prohibits simultaneous employment as a peace officer and as a community supervision officer, even if uncompensated for that position.

LO-93-095: Constitutionality of Dress, Hair Code Policies

The determination whether a condition of probation, such as a dress and hair code, violates the right to free expression under the state or federal constitution depends upon whether the condition is primarily designed to meet the ends of rehabilitation and protection of the public, and is reasonably related to such ends. Whether the condition satisfies these criteria will depend upon the facts of each individual case. Such a condition is not necessarily constitutional in each and every case.

Juvenile Policy Topic: Procedure - Detention Centers

DM-86: Sheriff's Responsibilities in County-Contracted Facilities

The only duty of a sheriff with regard to a detention facility operated by a private vendor pursuant to a contract with his county is to exercise “regular, on-site monitoring” of the facility. The Commission on Jail Standards has a continuing duty under Chapter 511 of the Government Code to monitor a private detention facility for compliance with its standards. If a facility fails to comply with the one-year deadline for certification of its jailers by the Commission on Law Enforcement Officer Standards and Education, the Commission on Jail Standards may conclude that the facility “does not comply with state law” under Chapter 511, and apply certain remedies against the facility.

DM-38: Persons under 21 in TYC Detention Centers

A ward of the Texas Youth Commission who is between the ages of 18 and 21 who has been arrested for, charged with, or convicted of any crime may under no circumstances be housed in the same compartment of a facility as, or permitted regular contact with, any “child” as defined in section 51.02 of the Family Code.

DM-24: Detention Centers as “Jails”

All county facilities used by a county for the confinement of county prisoners are subject to the jurisdiction of the Commission on Jail Standards under Government Code, Chapter 511. The commission has authority to establish reasonable standards for the design of county detention facilities ancillary to the “county jail” proper that depart from the single cell dormitory requirements for “county jails” in Local Government Code, section 351.006(d) and (e).

LO-97-010: TYC Teachers and Benefits

Longevity pay and benefit replacement pay are included in the capped rate of salary for teachers employed by the Texas Youth Commission. The minimum salary paid to such teachers, however, may not be reduced by the longevity and benefit replacement payments in order not to exceed the capped salary rate.

LO-94-088: Juvenile Detention Facility Special Taxes

Section 62.001(c) of the Human Resources Code authorizes a county to levy a special tax to establish and maintain a detention home or parental school for the juveniles of the county pursuant to section 62.001(a) or to levy such a tax to pay another county for the proper care and training of its juveniles pursuant to section 62.001(b). Of course, the county may not levy a special tax in either case without holding an election on the question in accordance with subsections (c) and (d) of section 62.001.

A county may expend the revenues it generates from a special tax it has levied under subsection (c) to fund a contract with a private facility operator for the detention of children within the county.

LO-92-003: Juveniles in Out-of-County Facilities

A judge in Cherokee County is empowered to order a juvenile to be held in a facility in Angelina County.

OR2001-5795: Disclosure of Juvenile's Death in a Detention Facility

Information about the death of a juvenile in a detention facility cannot be disclosed because of the child abuse investigation provision contained in §261.201 of the Family Code. Accordingly, the county must withhold the information from disclosure under §552.101 of the Government Code as information made confidential by law.

Juvenile Policy Topic: Procedure - Miscellaneous

GA-0056: Broadcasting Sex Offender Information on Cable Television

A local government may broadcast on a local cable television station all information about a registered sex offender that is contained in the registration form for sex offenders, except for information that is excepted by Art. 62.08(b), C.C.P. (*See*, Art. 62.08(a), (b), C.C.P.) A registrant's numeric risk level is not public information until it first appears in a newspaper in accordance with the provisions of Chapter 62 of the Code of Criminal Procedure that require notice to be published.

GA-0017: Recovering Costs of Serving Summonses in Juvenile Cases

A court may order any non-prevailing party to pay the costs incurred in issuing summons to various parties under §53.06 of the Family Code. A court may order a non-prevailing party, including a parent, guardian, custodian, guardian ad litem, or other necessary party to pay the service costs if the person is subject to an order under §54.041 of the Family Code. "Because both the Texas Rules of Civil Procedure and the Texas Civil Practice and Remedies Code contemplate that a non-prevailing party whose interests are adverse to the state's may be ordered to reimburse service costs, we conclude that the judge may issue such an order when the state prevails"

JC-0500: Constitutionality of Racial Profiling Statute

No enactment of the Texas Legislature may be held invalid for a deficiency in title under Art. III, §35 of the Texas Constitution, as amended in 1986. Senate Bill 1074 is not unconstitutional for failure to meet the title requirement in Art. III, §35 of the Texas Constitution.

JC-0246: Amount of Credit for Time Served in County Jail

A defendant who is sentenced to county jail for failure to pay a fine assessed as a result of conviction for a Class C misdemeanor should be credited at a rate of not less than \$100 for each day or part of a day served in jail.

JC-0242: State's Right to Jury Trial in Juvenile Case

The State has no right to a jury trial and cannot preclude a waiver of a jury trial in a juvenile proceeding. Rule 216 of the Texas Rules of Civil Procedure is not applicable to the determination of whether a jury trial is available in a juvenile proceeding.

JC-0070: Polygraph Examiner Reporting Abuse or Neglect

A polygraph examiner must report information indicating that a child has been or may have been abused or neglected in accordance with section 261.103 of the Family Code. A court would probably find that a polygraph examinee is not entitled to counsel during the course of a polygraph examination and that conducting the examination without counsel does not violate the examinee's

due process rights. However, the attorney-client privilege applies to testimony of a polygraph examiner hired by an attorney in certain circumstances. An examinee may have the right to claim the privilege against self-incrimination during the course of a polygraph examination. If the state wishes to compel an examinee who has legitimately invoked the privilege to respond to the question, the state must determine whether to provide immunity for the confession.

DM-354: Appointment of Counsel to Represent Indigent Defendant

The Code of Criminal Procedure, article 1.051(d)(3), expressly authorizes a trial court to appoint counsel to represent an indigent capital defendant in a post-conviction habeas corpus proceeding “if the court concludes that the interests of justice require representation.” Furthermore, a trial court has a ministerial duty to award attorney’s fees, upon submission of a fee request in a proper form, to appointed counsel. Lastly, the trial court may appoint only licensed attorneys and therefore may not appoint an agency or association to provide counsel to a defendant. The trial court may, however, request that an agency or association procure a qualified attorney who is willing to provide counsel.

DM-349: Deferred Adjudication and Pardoning

A person who has successfully completed deferred adjudication community supervision and who has been discharged after dismissal of charges pursuant to section 5(c) of article 42.12 of the Code of Criminal Procedure is not eligible to apply to the Board of Pardons and Paroles for a pardon for the crime of which the person was found guilty, for such a person has no legal disabilities or disqualifications resulting from the deferred adjudication that are subject to remission by pardon.

DM-315: Duty of Local Officials to Fingerprint

Section 80.001 of the Human Resources Code obliges state and local law enforcement agencies to provide free fingerprinting services to the public upon request and without additional conditions.

DM-298: Charging Indigents for Protective Orders

Pursuant to section 71.04(e) of the Family Code, a clerk must not charge an applicant for a protective order under Chapter 71 of the Family Code more than \$36 total for filing the application and serving notice of the application, regardless of the number of respondents who must be served or the number of times service must be attempted before the server actually delivers the service. Although an applicant for a protective order is presently receiving a governmental entitlement based on indigency, the applicant must, if he or she claims to be unable to pay the filing fee and other costs as provided in section 71.07 of the Family Code, file with the clerk an affidavit of inability to pay in which the applicant provides information regarding all items specified in paragraph two of Texas Rule of Civil Procedure 145.

DM-245: County Reimbursements for Interpreters

Article 38.30 of the Code of Criminal Procedure requires interpreters in criminal cases to be paid from county funds. A judge of a county court-at-law may not assess interpreters’ fees either as costs or require payment as a condition of probation.

DM-200: Jurisdiction and Appointment of Counsel in Truancy Cases

Section 54.021 of the Family Code does not require a juvenile court to hold a hearing prior to waiving its exclusive original jurisdiction in a case under section 51.03(b)(2) of the Family Code and transferring the case to a justice of the peace. A child brought into court under section 51.03(b)(2) of the Family Code is entitled to representation by an attorney at all stages of the proceedings. If the child or the child's parents are unable to afford counsel, the court must appoint an attorney to represent the child. In general, tardiness to class does not invoke proceedings under either section 51.03 (b)(2) of the Family Code or section 4.25 of the Education Code.

DM-179: Drug Rehabilitation Centers and Sentencing Time

A judge must not apply time spent in a substance abuse treatment facility pursuant to section 12.422 of the Penal Code toward completion of the defendant's sentence if the court revokes the defendant's probation.

DM-103: Juvenile Boards and Judicial Pay Increases

The juvenile board for Castro, Hale, and Swisher counties has no authority to set the salaries of its members.

DM-79: Juvenile Boards and Hiring/Firing Policies

Pursuant to sections 152.0007 and 152.0008 of the Human Resources Code, the chief juvenile probation officer of the Brazos County Juvenile Probation Department has the authority to appoint juvenile probation department personnel, subject to the approval of the Brazos County Juvenile Board. The chief juvenile probation officer and assistant juvenile probation officers serve at the pleasure of the juvenile board, and the juvenile board has the authority to terminate their employment. The chief juvenile probation officer has the authority to terminate other juvenile probation department employees, subject to the approval of the juvenile board.

LO-98-111: Constitutionality of Juvenile Curfew Ordinance

Juvenile curfew ordinance adopted by the City of Crockett, Texas, is facially constitutional, since it is modeled on the Dallas ordinance upheld by the Fifth Circuit Court of Appeals in *Qutb v. Strauss*, 11 F.3d 488 (5th Cir. 1993), cert. denied, 511 U.S. 1127 (1994).

LO-97-067: Retired Judges as Guardians Ad Litem

A former judge sitting by assignment is not precluded by section 74.055, Government Code, from accepting appointment as a guardian ad litem in any suit in which the guardian would not be required to plead and appear in court as an attorney

LO-97-063: Commissioners Courts Funding Non-Public Defenders

After the commissioners court has established a public defender's office pursuant to article 26.044 of the Code of Criminal Procedure, it remains obligated to pay attorneys appointed by the trial courts to represent indigent defendants and must direct payment of the full amount of attorney fees ordered by a court under article 26.05, unless it can show that the trial court's award is so unreasonable as to amount to an abuse of discretion.

LO-95-081: Filing of an Affidavit to Support Issuance of an Arrest Warrant

The filing of an affidavit to support the issuance of an arrest warrant by a justice of the peace does not stop the running of the statute of limitation for a Class A or Class B misdemeanor. The statute is tolled by the filing of information with supporting affidavit in the county court.

LO-95-030: Juvenile Case Transfers and Court Consent

A transfer of a juvenile case under Family Code, section 51.07(a) does not require the consent of the receiving court.

LO-93-038: Juvenile Courts Using County Space

Title 3 of the Family Code does not preclude a juvenile court from designating more than one office or room as a juvenile processing office in each police facility and sheriff's office within the court's jurisdiction.

Juvenile Policy Topic: Specific Crimes - Drugs

DM-433: City Jurisdiction Over Cigarette Vending Machines

A home-rule municipality is empowered to adopt an ordinance that either prohibits the sale of tobacco products through vending machines or restricts the placement of such machines to areas in which persons younger than 18 years of age are barred.

LO-96-144: Jurisdiction Over Alcohol Consumption by Minors

First-time violations of Alcoholic Beverage Code, sections 106.02, 106.04, and 106.05 do not fall within the jurisdiction of the constitutional or statutory county courts of Kerr and Lavaca Counties, but subsequent violations do fall within the exclusive jurisdiction of these courts. The justice courts and the municipal courts of Kerr and Lavaca counties to which the 74th Legislature's House Bill 1648 applies do have jurisdiction of prosecutions for violations of Alcoholic Beverage Code, sections 106.02, 106.04, and 106.05.

The district courts of Kerr and Lavaca counties do have jurisdiction of first-time offenses of sections 106.02, 106.04, and 106.05, but do not have jurisdiction of prosecutions for subsequent violations of sections 106.02, 106.04, and 106.05.

DM-427: Court Jurisdiction Over Alcohol Crimes for Persons Under 21

The justice courts and the municipal courts to which the 74th Legislature's House Bill 1648 applies do have jurisdiction of prosecutions for violations of Alcoholic Beverage Code, sections 106.02, 106.04, and 106.05.

Subsection (b) of section 106.115 of the Alcoholic Beverage Code violates state constitutional guarantees of due process and equal protection because it authorizes the imposition of a criminal punishment (community service) in some venues of prosecution (areas in which an alcohol awareness course is not readily available) that is not authorized in other venues. Subsection (b) is therefore invalid, but the other provisions of section 106.115 remain valid and enforceable because they may be given effect without subsection (b).

DM-320: Court Jurisdiction Over Juvenile Alcohol Cases

Section 19, article V of the Texas Constitution grants jurisdiction to justice courts in criminal matters in which the only possible sanction is a fine. Therefore, the justice courts do not have jurisdiction of prosecutions under sections 106.02, 106.04, and 106.05 of the Alcoholic Beverage Code, because those sections provide for the non-fine sanction of alcohol awareness education and because the legislature has not granted to the justice courts jurisdiction of prosecutions in which such a sanction may be imposed.

DM-236: City Jurisdiction Over Private Drug Testing

A home-rule city is not precluded as a matter of law from adopting an ordinance prohibiting random drug testing by private employers within the city.

DM-179: Drug Rehabilitation Centers and Sentencing Time

A judge must not apply time spent in a substance abuse treatment facility pursuant to section 12.422 of the Penal Code toward completion of the defendant's sentence if the court revokes the defendant's probation.

DM-176: Substance Abuse Questions on Driver's License Forms

A question used by the Department of Public Safety on the driver's license renewal form, which asks, inter alia, whether the applicant had a "problem" with alcohol or drug abuse, is unreasonable and therefore invalid.

DM-115: TABC and License Revocation

A proposed rule of the Texas Alcoholic Beverage Commission (TABC) which would establish a "rebuttable presumption" that a licensee or permittee had knowingly sold alcoholic beverages to a minor where it was shown that the seller had failed to request proper identification would be invalid as inconsistent with the applicable statutory provisions as interpreted by the courts.

Juvenile Policy Topic: Specific Crimes - Truancy

JC-0110: Juvenile Court Can Summon Custodian to Appear in Truancy Case

Section 54.021(g) of the Family Code authorizes a court with jurisdiction over truancy cases to compel the juvenile's court appearance by summoning the custodian to appear and to bring the juvenile. A juvenile court may also waive its exclusive jurisdiction of cases involving conduct indicating a need for supervision, either on a case-by-case basis or for all such cases. If the court waives its jurisdiction of all truancy cases as a class, the waiver is effective for one year.

JC-0103: Juvenile Court Without Jurisdiction in Truancy Case if Person is 17

A juvenile court is without jurisdiction to conduct an adjudication hearing for a person referred as a truant by a justice or municipal court if the conduct that forms the basis for the referral occurred after the person turned 17.

JC-0056: Authority of Constable to Execute Service of Process for Truancy Hearing

A constable may serve legal process on an individual failing to appear at a truancy hearing. Even though this duty would generally be performed by the school attendance officer, it is lawful for a constable to serve any legal process addressing the compulsory attendance provisions of the Education Code.

DM-304: Parental Punishment for Child Truancy

Senate Bill 7 of the 73rd Legislature was enacted after House Bill 681 of the same session, so its amendment to the punishment provision of Education Code, section 4.25 prevails over the conflicting amendment in House Bill 681. Therefore, "[a]n offense under . . . section [4.25] is punishable by a fine of not less than \$10 nor more than \$50 for the first offense, not less than \$20 nor more than \$100 for the second offense, and not less than \$50 nor more than \$200 for a subsequent offense." Education Code, section 4.25(a), (b), amended by Acts 1993, 73d Legislature, Chapter 347, section 6.01.

DM-200: Truancy Cases and Jurisdiction, Counsel, and Codes

Section 54.021 of the Family Code does not require a juvenile court to hold a hearing prior to waiving its exclusive original jurisdiction in a case under section 51.03(b)(2) of the Family Code and transferring the case to a justice of the peace. A child brought into court under section 51.03(b)(2) of the Family Code is entitled to representation by an attorney at all stages of the proceedings. If the child or the child's parents are unable to afford counsel, the court must appoint an attorney to represent the child. In general, tardiness to class does not invoke proceedings under either section 51.03 (b)(2) of the Family Code or section 4.25 of the Education Code.

LO-94-058: Authority of City Police Over Truancy

Municipal police of a municipality in which school district territory is included have authority to enforce the truancy laws in such a district “where no attendance officer has been elected.” In addition, law enforcement officers, including city police, have authority to take a child into custody for truancy within the definition of “conduct indicating a need for supervision” under Family Code, section 51.03(b)(2), even if there is an attendance officer serving the district.

Truancy in itself would not be grounds for a school’s refusing to re-admit a child after he had been taken into custody for truancy.

A court may require a parent found to have committed the offense set out in Education Code, section 4.25, repeated failure to require a child to attend school, to render personal services to a charitable or educational institution as a condition of probation. A juvenile court in a proceeding against a juvenile for violation of Education Code, section 4.251, for the offense of failure to attend school for the periods set out therein, may impose reasonable community service work on a juvenile. Where a case has been transferred under Family Code, section 54.021, from a juvenile to a justice court and the child has been found to have been truant within the definition of “conduct indicating need for supervision” in section 51.03(b)(2), the justice court may require that “the child complete reasonable community service requirements.” Id. section 54.021(d)(4).

The offense provided for in Education Code, section 4.25, a parent’s continued failure to require a child’s school attendance, is punishable, pursuant to Education Code, section 4.25, as amended by Senate Bill 7, 73rd Legislature, by a fine of not less than \$10 nor more than \$50 for the first offense, not less than \$20 nor more than \$100 for the second offense, and not less than \$50 nor more than \$200 for a subsequent offense.

Juvenile Policy Topic:

Specific Crimes - Miscellaneous

JC-0393: Defendant Convicted of Multiple Class C Misdemeanors

An individual who is confined when a court orders a term of confinement to enforce the discharge of a fine or court costs on another conviction serves the confinements concurrently, unless the court orders otherwise. With respect to cases where fines or costs are discharged consecutively, the judge's order must comport with Art. 42.08 of the Code of Criminal Procedure and must contain the five elements Texas courts have listed on numerous occasions. An individual convicted of multiple Class C misdemeanors receives credit for time spent in confinement prior to sentencing on each of the sentences as though the time ran concurrently.

JC-0289: Protective Order Regarding Family Violence

Neither the domestic violence protective order sections of the Family Code or of the Code of Criminal Procedure explicitly permit, or specifically prohibit, a judge from including in such an order a provision requiring a police officer to escort a perpetrator of domestic violence to the family home to retrieve personal property. Art. 5.045 of the Code of Criminal procedure is not by its terms applicable in such a situation and accordingly does not provide immunity from liability for a police officer providing such an escort.

JC-0258: Authority of a Peace Officer to Detain a Mmotorcyclist Riding Without a Helmet

A peace officer has the authority to stop a person operating a motorcycle without a helmet, or carrying a passenger without a helmet, if the motorcycle operator does not display on his license plate or license plate mounting bracket a sticker issued pursuant to section 661.003(d) of the Transportation Code.

DM-437: Court Authorization of Sex Offender Residential Signs

A condition of community supervision is authorized by article 42.12 of the Code of Criminal Procedure if it is unambiguous and bears a reasonable relationship to the treatment of the probationer and the protection of the public. A condition is unreasonable only if it has no relationship to the crime, it relates to conduct that is not in itself criminal, and it forbids or requires conduct that is not reasonably related to the future criminality of the defendant or does not serve the statutory ends of probation. A condition that restricts a fundamental right is valid and does not run afoul of constitutional guarantees if it is primarily designed to meet the ends of rehabilitation and protection of the public and is reasonably related to such ends. A condition of community supervision requiring a defendant to post a warning sign at his residence stating that he is a convicted sex offender is not per se unauthorized by article 42.12 or unconstitutional.

LO-96-126: Mandatory Supervision for Inmates Convicted of Indecency With a Child

Inmates convicted of indecency with a child under section 21.11(a)(1) of the Penal Code are not eligible for mandatory supervision according to the terms of Code of Criminal Procedure, article 42.18, section 8(c).

LO-96-059: Criminal Trespassing and Public Buses

The offense of criminal trespass, as described in section 30.05 of the Penal Code, may not be committed on a bus.

LO-94-056: City Regulation of Children's Firearms

A home-rule city ordinance directed at the prevention of discharges of firearms by children does not on its face violate Local Government Code, section 215.001, which bars municipal regulation of inter alia the "keeping of firearms," since the ordinance falls within the field of regulation of the discharge of firearms specifically reserved to municipalities by the statute.

OR2001-6133: Incident Report Involving Juvenile Suspect Not Subject to Disclosure

Incident report involving a car allegedly stolen by a juvenile is not subject to disclosure even if the name of the juvenile is withheld. The information at issue involves juvenile conduct that occurred after September 1, 1997. It does not appear that any exceptions in §58.007 of the Family Code apply; therefore, the requested information in its entirety is confidential pursuant to §58.007(c) of the Family Code. The information must be withheld from disclosure under §552.101 of the Government Code.

Juvenile Policy Topic: School Crime

JC-0504: Standard of Proof for “Disruptive Activity” Offense

§37.123 of the Education Code, which prohibits disruptive activities on a school campus, requires in order to sustain a conviction that the actor intentionally engaged in one of the five species of conduct described in that statute, rather than merely engaged in conduct that ultimately resulted in one of the effects described therein.

JC-0446: Expulsion Not Required for Certain Felonies

A school district is not required to expel a student whose conduct: (1) constitutes a felony; (2) would require removal under §37.006(a)(2)(C) or (D), Education Code; (3) *does not* occur on school property or while attending a school-sponsored or school-related activity on or off of school property; and (4) *does* occur within 300 feet of school property as defined in §37.006(a)(2).

JC-0325: Concealed Handgun License

A governmental unit has statutory authority to bar entry to its property by a concealed handgun licensee carrying a weapon by either providing individualized verbal notice to the licensee or by erecting a sign or other written communication in compliance with Section 30.06 of the Penal Code, that furnishes statutory notice to concealed handgun licensees that entry on the property while carrying a concealed handgun is prohibited. However, a governmental unit may not, merely by promulgating its own rules, regulations, or policies, bar the holder of a concealed handgun license from carrying a weapon onto property owned or controlled by the particular governmental unit.

DM-427: Court Jurisdiction for Alcohol Crimes for Persons Under 21

The justice courts and the municipal courts to which the 74th Legislature’s House Bill 1648 applies do have jurisdiction of prosecutions for violations of Alcoholic Beverage Code, sections, 106.02, 106.04, and 106.05.

Subsection (b) of section 106.115 of the Alcoholic Beverage Code violates state constitutional guarantees of due process and equal protection because it authorizes the imposition of a criminal punishment (community service) in some venues of prosecution (areas in which an alcohol awareness course is not readily available) that is not authorized in other venues. Subsection (b) is therefore invalid, but the other provisions of section 106.115 remain valid and enforceable because they may be given effect without subsection (b).

DM-304: Parental Punishment for Child Truancy

Senate Bill 7 of the 73rd Legislature was enacted after House Bill 681 of the same session, so its amendment to the punishment provision of Education Code, section 4.25, prevails over the conflicting amendment in House Bill 681. Therefore, “[a]n offense under . . . section [4.25] is punishable by a fine of not less than \$10 nor more than \$50 for the first offense, not less than \$20 nor more than \$100 for the second offense, and not less than \$50 nor more than \$200 for a subsequent offense.” Education Code, section 4.25(a), (b), amended by Acts 1993, 73rd Legislature, Chapter 347, section 6.01.

DM-200: Truancy Cases and Jurisdiction, Counsel, and Codes

Section 54.021 of the Family Code does not require a juvenile court to hold a hearing prior to waiving its exclusive original jurisdiction in a case under section 51.03(b)(2) of the Family Code and transferring the case to a justice of the peace. A child brought into court under section 51.03(b)(2) of the Family Code is entitled to representation by an attorney at all stages of the proceedings. If the child or the child’s parents are unable to afford counsel, the court must appoint an attorney to represent the child. In general, tardiness to class does not invoke proceedings under either section 51.03 (b)(2) of the Family Code or section 4.25 of the Education Code.

DM-56: School District Authority Over Tobacco Use

The Texas Education Code authorizes the board of trustees of an independent school district to enact and enforce a policy prohibiting students, district personnel, and the general public from using tobacco products on any school district property.

Juvenile Policy Topic:

School Miscellaneous

GA-0202: Disciplinary Proceeding for Violating District's Corporal Punishment Policy

§22.0512, Education Code, prohibits a school district from bringing a disciplinary proceeding against a professional employee for using physical force that the employee reasonably believes is necessary “to enforce compliance with a proper command issued to control, train, or educate the child.” The statute also prohibits bringing a disciplinary proceeding against a professional employee for using physical force for punishment purposes if the school district has no corporal punishment policy or its policy is substantially similar to §22.0512(a) and §9.62, Penal Code. §22.0512 does allow a school district to bring a disciplinary proceeding against a professional employee if the employee uses physical force to punish the child (corporal punishment) contrary to the school district’s policy.

JC-0538: Parental Access to Minors’ School Counseling Records

Only under very narrow circumstances may a minor child’s school counseling records be withheld from a parent. Under the Federal Family Educational and Privacy Rights Act, a public school may withhold a minor child’s counseling records from a parent only if the records are kept in the sole possession of the counselor, are used only as the counselor’s personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the counselor. State law permits the counselor to withhold a minor child’s records only if the counselor is a “professional” and if the counselor “determines that release” of such records “would be harmful to the patient’s physical, mental, or emotional health. If the counselor does not fall within the category of licensed “professional” and the parent “is entitled to access to all written records” of the school district “concerning the parent’s child, including...counseling records.”

JC-0491: School District Policy re: Corporal Punishment and Physical Restraint

The policy statement of the Arlington ISD (prohibiting corporal punishment and allowing only limited use of physical restraint) is generally within the district’s authority to manage the district and to adopt rules for the safety and welfare of students, employees, and property. Disciplinary matters with respect to students receiving special education services in particular instances may implicate rules promulgated by the Commissioner of Education under §37.0021 of the Education Code, or the federal Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1462 (1994 & Supp. I 1995-Supp. V 1999).

JC-0398: Minimum Attendance for Class Credit

The requirement of Section 25.092 of the Education Code – that a student attend class for ninety percent of the days on which the class is offered in order to receive credit for the class – is applicable without regard to whether the student is exempt from compulsory attendance under Section 25.086.

Section 25.092 does, however, make allowance for extenuating circumstances. Students who are in attendance fewer than the number of days required may petition for class credit before an attendance committee appointed by the board of trustees of a school district. A student may appeal an adverse ruling of the attendance committee to the board of trustees and ultimately to a districts court under Section 25.092 (d).

JC- 0378: Open-Enrollment Charter Schools

Members of the governing board of a nonprofit corporation that establish an open-enrollment charter school and the governing board of the school, if there is one, are not governmental entities subject to the prohibitions against nepotism in Chapter 573 of the Government Code or the regulation of local public officers' conflicts of interest in Chapter 171 of the Local Government Code.

JC-0371: School District Trustee

A trustee of the Pearland Independent School District is barred by the common-law doctrine of incompatibility from simultaneously serving as a part-time volunteer teacher in a regular academic classroom for a single semester.

JC-0333: Texas Legislative Council Student Information

The federal Family Educational Rights and Privacy Act does not permit the Texas Education Agency to release personally identifiable student information to employees of the Texas Legislative Council without consent despite the fact that Section 323.019 of the Government Code provides that such employees are “state school officials” for purposes of that federal law.

JC-0332: School District Boundaries

The Boles Independent School District may not operate the Phoenix Campus, a school outside the district's geographic boundaries.

JC-0099: Students May Not be Deprived of Certain Benefits

Students whose absences are excused pursuant to section 25.087(b) of the Education Code and who successfully complete the missed work within the reasonable time afforded them by the statute may not be deprived of a benefit based on “perfect attendance.”

DM-476: Authority of DPRS Investigator to Interview Student-Victim in School

In the case of suspected child abuse or neglect under Chapter 261 of the Family Code, a local school official may not deny an investigator's request to interview a student (the alleged victim) in the school. Additionally, a local school official may not condition granting the request on a requirement that school personnel, such as a counselor, attend the interview. A school official who denies an investigator access to a student or who conditions access on the investigator conducting the interview in the presence of school personnel, may interfere with the investigation for purposes of Family Code § 261.303(a).

DM-412: Authority of County Juvenile Boards to Provide Alternative Education

A county juvenile board is authorized to provide educational services at a juvenile justice alternative education program to students other than pursuant to a juvenile court order. A county juvenile board is authorized to enter into a memorandum of understanding with a school district that provides for juvenile justice alternative education program placement of students expelled from school but not adjudicated delinquent.

DM-400: Parent or Guardian Teaching Driver Education Course

A parent or guardian who teaches a driver training course approved by the Department of Public Safety is not required to obtain a license for a commercial driver training school, nor must the parent or guardian be involved in the “home school” instruction of the person to be taught.

DM-386: Driver Education Courses that do not Meet State Standards

Any public school offering the program of organized instruction in driver education and traffic safety that the Texas Education Agency has adopted is offering an “approved driver education course” and so the Texas Education Agency must issue such school driver education certificates used for certifying completion of the course. There is no requirement that a licensed driving safety school pay an application fee unless the school desires to change the driving safety course it offers, nor is the school required to apply for a new license.

DM-352: Electronic Pagers on School Property

Application to leased paging devices of the provisions of Education Code, section 21.309 or requiring the forfeiture to a school district of paging devices possessed by a student on school property or at school activities would not be per se unconstitutional where notice and opportunity for hearing are given to affected parties. Where the district desires to dispose of forfeited devices, it is advised that, in order to comply with the restrictions of article III, section 52 of the state constitution, it must first attempt to sell them through bidding or other means calculated to obtain a reasonable quid pro quo.

DM-335: State School Regulations and Privately Contracted Entities

Section 23.34 of the Education Code, which permits school districts to contract with public or private entities to provide educational services, does not relieve school districts that enter into such contracts from complying with statutory requirements applicable to school districts. School districts must ensure compliance with statutory requirements when contracting with other entities under section 23.34.

DM-294: Law Enforcement Agencies and School Information

Article 15.27 of the Code of Criminal Procedure authorizes a law enforcement agency to communicate to the proper school official the nature of the charges against an arrested or detained student, the identities of any alleged victims who are students or school personnel, and all other information about the arrest or detention of a student that will enable the school official to take appropriate action to prevent violence, protect students and school personnel, and further educational purposes.

DM-212: Conflicts of Interest for School Security Guards

Article XVI, section 40, does not as a matter of law prohibit city police officers and sheriff's deputies from serving as part-time security officers for a school district. City police officers, sheriff's deputies, and school-district security officers do not hold "civil offices" as a matter of law as that term is used in article XVI, section 40. Previous attorney general's opinions concluding to the contrary are overruled. We cannot determine, however, whether article XVI, section 40, prohibits any particular police officer or sheriff's deputy from serving as a security officer for a school district. Determining whether a particular city police officer, sheriff's deputy, or school-district security officer holds a civil office raises questions of fact, which cannot be addressed in the opinion process.

We can find nothing in Texas law that would prevent a school district from contracting with a private security service for security officers.

LO-98-002: Sale of Alcoholic Beverages at Non-School Events Held at Student Activities Complex

The Education Code does not prohibit the sale of alcoholic beverages at the Student Activities Complex owned by the Socorro Independent School District except during an athletic event sponsored or participated in by a public school of this state.

LO-97-049: School Districts and Employee Legal Fees

Common law recognized by this office authorizes a school district to employ counsel to defend a school district employee in a criminal proceeding if the board of trustees determines in good faith that the legitimate interests of the school district require the assertion of a vigorous legal defense. A school district is not authorized under the common law to reimburse an employee for legal expenses after the expenses have been incurred. In order to pay counsel with local school funds, the board of trustees must determine that employment of counsel to represent the employee in a criminal proceeding is a "service necessary in the conduct of the public schools." Education Code, section 45.105(c).

LO-97-024: School District Scholarships for Program Participation

Education Code, section 45.105(c), does not authorize a school district to use local school funds to give monetary awards to students who participate in a drug-testing program because participation in a drug-testing program is not specifically listed in section 45.105(c) and does not constitute a good or service.

LO-96-134: Creation of Alcohol-Free School Zones

A "public school" for purposes of subsection (a)(1) of section 109.33 of the Alcoholic Beverage Code is any institution supported, in whole or in part, by public funds. With respect to any such institution, a commissioner's court or the governing body of a municipality may, on its own initiative, designate a 300-foot "alcohol-free zone." However, for purposes of subsection (a)(2) of section 109.33 of the Alcoholic Beverage Code, and section 38.007 of the Education Code, only a school operated by a "school district" located in a municipality of 900,000 or more is eligible to be included within a 1,000-foot "alcohol-free zone."

LO-96-009: Prohibition of Handguns on School Property During Off-Hours

A person would violate sections 46.03 and 46.035 of the Penal Code if the person carried a licensed concealed handgun on the “premises” (as that word is defined in section 46.035) of a school or educational institution where a high school or collegiate sporting or interscholastic event was occurring.

The word “premises,” as used in section 46.03(a)(1), means those portions of a structure, and of the land, including appurtenances, on which the structure is situated, of which a school or educational institution has ownership or control.

LO-95-082: The Open Meetings Act and Parental Grievances

The Open Meetings Act (the “act”), Government Code, ch. 551, vests the governmental body at issue with the authority to make the initial determination of whether it is authorized under the act to consider an agenda item in closed session. Section 551.142 of the Government Code provides that “[a]n interested person . . . may bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of this chapter by members of a governmental body.”

Because section 551.074 of the Government Code does not require that a personnel matter be considered in a closed meeting, section 551.082(a)(1) and (b) of the Government Code, providing that a school board may meet in closed session to consider a case involving the discipline of a public school child unless the parent objects, must prevail in circumstances where both provisions arguably apply and the child’s parent insists on an open meeting.

LO-95-037: Enrolling Drop-Outs, Graduates in High School Cosmetology Classes

The Texas Cosmetology Commission is not authorized to promulgate a regulation limiting training programs in public high schools to the operator course. Each public high school may choose to enroll high school graduates or drop-outs in specialty programs, assuming such programs have been approved by the commission. A student seeking an instructor’s license must be a high school graduate or possess a General Equivalency Diploma prior to enrolling in an instructors program.

Pursuant to V.T.C.S., article 8451a, section 21(g)(1) and (2), refunds to students withdrawing from schools licensed by the commission must be computed on the basis of actual hours of course time completed.

LO-95-034: Constitutionality of Locker Room Video Cameras

We have found no statute that expressly states whether a school district may install a video surveillance camera in student locker rooms or gymnasiums to identify students who allegedly are stealing property. Whether such surveillance would constitute an illegal search in violation of the Fourth Amendment of the United States Constitution or an invasion of privacy under Texas law involves the investigation and resolution of fact questions.

LO-94-030: Compensation for Assaulted School District Employees

Texas Education Code, section 13.904(f), requires a school district to pay the salary of an employee who is physically assaulted during the performance of his regular duties while that employee is recovering from the injuries. The salary payment is coordinated with workers compensation benefits during the period of time, up to two years, that it takes to recover from injuries received in the assault.

LO-94-027: Extracurricular Activities in Discriminatory Private Facilities

Pursuant to sections 21.9205 and 23.26(b) of the Education Code, the board of trustees of an independent school district must determine in the first instance whether an athletic club at which sanctioned or sponsored extracurricular activities occur is discriminating against any person because of the person's race, color, creed, religion, national origin, or sex. The board may look to the well-developed body of federal anti-discrimination law to determine what constitutes such discrimination. If the board discovers that such a facility is so discriminating, it may not permit any sanctioned or sponsored extracurricular activity to take place at such a club.

Juvenile Policy Topic: Jurisdiction - County Issues

GA-0189: Constable's Authority in a School District Outside his Precinct

As a practical matter a constable exercising law enforcement duties will naturally focus on the precinct that elected the constable. But a constable's authority as a peace officer does not end at the precinct boundary. Consequently, the constable would have the statutory authority to patrol and perform other peace officer duties on school district property within the constable's county, even though a portion of the property lies partially outside the constable's precinct.

JC-0459: County's and School District's Obligations vis-à-vis a Juvenile Justice Alternative Education Program (JJAEP), and Related Questions

A county or commissioners court is not statutorily responsible for any aspect of the development or operation of a JJAEP, outside of its responsibility to provide some funding to the juvenile board and to review that portion of the juvenile board's budget funded with county monies. Because the juvenile board receives some county funds, the county may have corresponding obligations or liabilities.

A county has no authority to determine which expulsions that are discretionary under §37.007 of the Education Code will be subject to placement in the JJAEP. A school district's authority to determine which discretionary expulsions will be subject to placement in a JJAEP stems from its duty to negotiate with the juvenile board an annual memorandum of understanding.

A school district is not obligated to fund the construction of JJAEP facilities. A juvenile board may purchase real estate for JJAEP purposes, but a juvenile board may not accept contributed real estate for JJAEP purposes, unless the Legislature has expressly authorized it to do so.

JC-0439: County may Grant Funds to a Nonprofit Entity to Provide Services to Children

The Family Code authorizes a county to participate in and provide funds to a child-advocacy center in accordance with a memorandum of understanding. A county may grant funds to a nonprofit entity to accomplish a statutorily authorized purpose, provided that the county determines the transaction will achieve a public purpose and that adequate controls are placed on the expenditure to ensure that the public purpose is accomplished.

JC-0312: Responsibility of a Sheriff for Taking Custody of a Person Hospitalized for Injuries Sustained While Being Arrested by Law Enforcement Officers of a Different Jurisdiction

A person arrested by a law enforcement agency other than the sheriff's department, and hospitalized as a result of that arrest, becomes the responsibility of the sheriff, pursuant to Art. 2.18 of the Code of Criminal Procedure, upon the issuance by a magistrate of a commitment order directing that the sheriff "receive and place in jail the person so committed."

JC-0209: Authority of Juvenile Board to Hire Attorney

The Potter County Juvenile Board is authorized to contract with an attorney to represent the board in litigation. The board may pay its attorney's fees with funds in the juvenile probation department account in the county treasury without the approval of the Potter County Commissioners Court.

JC-0085: Commissioners Court Without Authority to Set Salaries for Juvenile Probation Department Employees

The juvenile board, not the commissioners court, has authority over the employment decisions, travel policies, and general management and financial decisions regarding a juvenile probation department, juvenile detention department, or juvenile detention facility. Furthermore, the commissioners court has no authority to approve the expenses of programs under the jurisdiction of the juvenile board before paying such claims, or to approve amendments of the board's budget.

DM-364: Concealed Handgun on Rapid Transit or in County or City Park

The concealed handgun law did not affect the power of a rapid transit authority to prohibit the carrying of handguns on its vehicles by persons other than employees of the rapid transit authority. The reasonableness and necessity of a measure taken under the rapid transit authority's police power is a matter within the authority's discretion.

The legislature did, however, specifically take away from a municipality the authority to prohibit the licensed carrying of a concealed handgun in a city or county park. A county, though, has the authority to adopt a rule providing for the exclusion or ejection of persons carrying handguns from county parks if such a rule is reasonably necessary and appropriate for the accomplishment of a legitimate object falling within the county's police power under Section 331.007 of the Local Government Code.

DM-313: Counties and Municipal Arrestees, Magistrate Issues

If a city police officer arrests a person for violating a state statute and a magistrate issues a commitment order for the prisoner, the county is required to incarcerate the prisoner. A municipal court judge is a proper magistrate to issue such an order if he holds office in the proper county for venue purposes. Should the sheriff refuse to take custody of the prisoner, the county is responsible for the prisoner's maintenance.

DM-291: Counties and Returned Indictments

A Kleberg County grand jury may return an indictment for an offense committed in Kenedy County for which venue in Kleberg County is proper. The determination whether it is appropriate for a grand jury to return an indictment for a particular offense committed in another county must be made on a case by case basis.

DM-245: County Reimbursement for Interpreters

Article 38.30 of the Code of Criminal Procedure requires interpreters in criminal cases to be paid from county funds. A judge of a county court-at-law may not assess interpreters' fees either as costs or require payment as a condition of probation.

DM-230: Justice of the Peace Authority Over Complaint Dismissals

Article 45.54 of the Code of Criminal Procedure does not permit a justice of the peace to dismiss a complaint against a defendant who has failed to successfully complete a driving safety course.

DM-111: Sheriff's Authority in Detention Center Medical Care

A county commissioners court has the authority to contract with a licensed physician to provide medical services to inmates incarcerated in the county jails. A county sheriff has the authority to schedule medical services for the county jails.

DM-103: County Juvenile Boards and Judicial Compensation Pay

The juvenile board for Castro, Hale, and Swisher counties has no authority to set the salaries of its members.

DM-87: Responsibility for Transportation of Juveniles

A county judge is not expressly empowered to order a sheriff or constable to transport persons to and from juvenile court. Unless it transfers the amount from another budgeted item, a county of less than 225,000 population may amend its budget to provide funds for transportation of juveniles only if the commissioners court finds that there exists a "grave public necessity to meet an unusual and unforeseen condition that could not have been included in the original budget through the use of reasonably diligent thought and attention."

DM-86: Sheriff's Responsibility in County-Contracted Facilities

The only duty of a sheriff with regard to a detention facility operated by a private vendor pursuant to a contract with his county is to exercise "regular, on-site monitoring" of the facility. The Commission on Jail Standards has a continuing duty under Chapter 511 of the Government Code to monitor a private detention facility for compliance with its standards. If a facility fails to comply with the one-year deadline for certification of its jailers by the Commission on Law Enforcement Officer Standards and Education, the Commission on Jail Standards may conclude that the facility "does not comply with state law" under Chapter 511, and apply certain remedies against the facility.

DM-77: Sheriff's Jurisdiction Concerning Arrests

A sheriff has no general authority to investigate criminal activities outside of the geographic boundaries of the county for which he is elected. His authority to make warrantless arrests outside his county is circumscribed by the conditions imposed in article 14.03(d) of the Texas Code of Criminal Procedure.

LO-98-073: District Court Judge is Not Member of Juvenile Board

The judge of recently created 392nd District Court was not a member of the Henderson County Juvenile Board, since the legislature had not amended the board's enabling act to include the judge of the newly created court.

LO-97-065: Employing Legal Defense for Sheriffs

The commissioners court may employ an attorney to defend the sheriff in a criminal prosecution pursuant to common law or § 157.901 of the Local Government Code, if the legitimate interest of the sheriff is at stake. The commissioners court may not reimburse the sheriff for his legal fees in the prosecution after he has incurred them.

LO-97-063: Commissioners Courts Paying Court-Appointed Counsel

After the commissioners court has established a public defender's office pursuant to article 26.044 of the Code of Criminal Procedure, it remains obligated to pay attorneys appointed by the trial courts to represent indigent defendants and must direct payment of the full amount of attorney fees ordered by a court under article 26.05, unless it can show that the trial court's award is so unreasonable as to amount to an abuse of discretion.

LO-97-032: Acceptance of County Gifts

The Bexar County Dispute Resolution Center has no statutory authority to accept gifts of personal property, and Bexar County may not accept such gifts for the Center's benefit.

LO-97-025: Security Fee for Misdemeanor Defendants

A security fee may be collected pursuant to Code of Criminal Procedure, article 102.017 from a defendant who is "convicted" of an offense as the term "convicted" is defined by article 102.017, whether or not the defendant was convicted in a trial. Entry of a judgment upon a written plea by mail triggers collection of the security fee from a defendant, but a defendant's appearance in open court at a pre-trial hearing, arraignment, or docket call, absent a conviction, does not.

LO-96-144: County Jurisdiction Over Juvenile Alcohol Crimes

First-time violations of Alcoholic Beverage Code, sections 106.02, 106.04, and 106.05 do not fall within the jurisdiction of the constitutional or statutory county courts of Kerr and Lavaca Counties, but subsequent violations do fall within the exclusive jurisdiction of these courts. The justice courts and the municipal courts of Kerr and Lavaca counties to which the 74th Legislature's House Bill 1648 applies do have jurisdiction of prosecutions for violations of Alcoholic Beverage Code, sections 106.02, 106.04, and 106.05.

The district courts of Kerr and Lavaca counties do have jurisdiction of first-time offenses of sections 106.02, 106.04, and 106.05, but do not have jurisdiction of prosecutions for subsequent violations of sections 106.02, 106.04, and 106.05.

LO-96-118: County Fees for Motor Vehicle Interlock Devices

A county may not charge a fee to a defendant who is subject to article 17.441 of the Code of Criminal Procedure, for the purpose of verifying the installation of and monitoring of a motor vehicle interlock device.

LO-96-091: Juvenile Probation Officers as Constables

A juvenile probation officer may not simultaneously hold the office of constable.

LO-96-078: Justices of the Peace as Juvenile Law Masters

Neither section 33 nor section 40 of article XVI of the Texas Constitution prohibit a justice of the peace from serving as a Bexar County part-time juvenile law master, regardless of whether the justice of the peace accepts compensation for the latter position. The two positions are not incompatible as a matter of law.

LO-96-046: Required Frequency of County Jail Inspections

Pursuant to § 511.009(a)(11) of the Government Code, the Commission on Jail Standards must inspect each county jail once each 12-month period. The Commission need not inspect a county jail within 365 days of a previous inspection.

§ 511.009(a)(11) does not require the Commission to adopt an inspection year that corresponds to the calendar year. The Commission may adopt an inspection year that corresponds to a fiscal year.

LO-95-083: Estates and Court Fees

If the estate of a ward is insufficient, the costs in a guardianship proceeding which are the responsibility of the county include those for services of a guardian ad litem, a court visitor, an attorney ad litem, and an interpreter, as well as clerk fees, service fees, court reporter fees, fees of masters appointed under rule or statute, and costs of services of mental health professionals. The costs of the services of a guardian or an attorney, as distinct from a guardian ad litem or an attorney ad litem, are not the county's responsibility.

LO-95-051: Payment for County-Appointed Counsel

The attorney general will not consider the propriety or validity of a district judge's orders.

LO-94-065: Transportation by Sheriffs of Children to Juvenile Court

Under section 52.026(c) of the Family Code, the sheriff of a county in which a child is taken into custody is not required to transport the child to juvenile court proceedings absent the adoption of an order by the juvenile board and approval of the juvenile board's order by record vote of the commissioners court. Sections 142.001 and 142.002 of the Human Resources Code require a juvenile probation officer to transport a child to juvenile probation proceedings if so ordered by a juvenile court.

LO-94-062: State Compensation for Felon Transportation

Convicted felons in county jails awaiting transfer to the state boot camp program are within the provisions of subchapter F, Chapter 499 of the Government Code, requiring state payment for inmates "awaiting transfer to the institutional division" of the Texas Department of Criminal Justice. Prisoners awaiting transfer to substance abuse felony program facilities are not, however, within the scope of subchapter F.

LO-93-100: Health Care Fees for Indigent County Inmates

The question of which health care services the Karnes County Hospital District is responsible for providing indigent residents of the district is to be determined in the first instance by the board of directors of the district.

LO-92-067: Transportation of Prisoners Between Counties

When an arrest warrant is issued for an individual alleged to have committed an offense in county A, and the individual is arrested in county B, the sheriff of county A has the duty to arrange the transport of the individual back to county A.

LO-92-003: Juveniles in Out-of-County Facilities

A judge in Cherokee County is empowered to order a juvenile to be held in a facility in Angelina County.

Juvenile Policy Topic: Jurisdiction

Municipal Issues

GA-0067: Authority of a Municipal Judge to Examine the State’s Witnesses Without a Prosecutor Being Present

A municipal judge does not have the authority to examine the state’s witnesses if the state is not represented by counsel when the case is called for trial.

JC-0584: Interpreter not Required for Parent of Juvenile Charged in Justice or Municipal Court

Chapter 57 of the Government Code applies to a plea in a misdemeanor case in justice court and establishes qualifications for spoken-language interpreters appointed in criminal cases under the authority of Art. 38.30, C.C.P. Justice and municipal courts have discretion to determine whether a party or witness requires an interpreter. When such courts do appoint an interpreter, section 57.002(a), G.C. imposes upon a court the mandatory duty to appoint a certified or licensed interpreter.

JC-0387: Municipal Peace Officer Executing an Emergency-Detention Warrant

Section 573.012 of the Texas Health and Safety Code authorizes a municipal or county peace officer to execute an emergency-detention warrant. A person who is actually admitted to a facility for emergency detention after a preliminary examination must be transported in accordance with Section 574.045.

JC-0277: Municipal Court May Allow Criminal Defense Attorneys to Post Bail

A municipal court must require from an attorney who acts as a surety on a bail bond for a client evidence of the sufficiency of the security offered, as provided by Arts. 17.11, 17.13 and 17.14 of the Code of Criminal Procedure. If a municipal court determines that a defendant has failed to make an appearance as required by a bail bond, Art. 22.02 of the Code of Criminal Procedure requires the court to enter a judgment nisi. What constitutes a “reasonable time” in which the defendant must appear in court before a judgment nisi must be entered under Art. 22.02 will depend on the facts of the particular case.

DM-433: City Jurisdiction Over Cigarette Vending Machines

A home-rule municipality is empowered to adopt an ordinance that either prohibits the sale of tobacco products through vending machines or restricts the placement of such machines to areas in which persons younger than 18 years of age are barred.

DM-372: Municipal Court Costs for “Teen Court”

Nothing in article 45.55 of the Code of Criminal Procedure negates a court’s obligation or discretion to impose court costs that are chargeable by other law, except that for offenses committed on or after September 1, 1995, the court is not required to charge any other costs, but it may do so.

DM-318: Peace Officers Enforcing City Ordinances

Code of Criminal Procedure, articles 2.12 and 2.13, do not in themselves authorize peace officers to enforce city ordinances.

DM-313: Counties and Municipal Arrestees, Magistrate Issues

If a city police officer arrests a person for violating a state statute and a magistrate issues a commitment order for the prisoner, the county is required to incarcerate the prisoner. A municipal court judge is a proper magistrate to issue such an order if he holds office in the proper county for venue purposes. Should the sheriff refuse to take custody of the prisoner, the county is responsible for the prisoner's maintenance.

DM-236: City Jurisdiction Over Private Drug Testing

A home-rule city is not precluded as a matter of law from adopting an ordinance prohibiting random drug testing by private employers within the city.

LO-94-058: Authority of City Police to Enforce Truancy Laws

Municipal police of a municipality in which school district territory is included have authority to enforce the truancy laws in such a district, "where no attendance officer has been elected." In addition, law enforcement officers, including city police, have authority to take a child into custody for truancy within the definition of "conduct indicating a need for supervision" under Family Code, section 51.03(b)(2), even if there is an attendance officer serving the district.

Truancy in itself would not be grounds for a school's refusing to re-admit a child after he had been taken into custody for truancy.

A court may require a parent found to have committed the offense set out in Education Code, section 4.25, repeated failure to require a child to attend school, to render personal services to a charitable or educational institution as a condition of probation. A juvenile court in a proceeding against a juvenile for violation of Education Code, section 4.251, for the offense of failure to attend school for the periods set out therein, may impose reasonable community service work on a juvenile. Where a case has been transferred under Family Code, section 54.021, from a juvenile to a justice court and the child was found to have been truant within the definition of "conduct indicating need for supervision" in section 51.03(b)(2), the justice court may require that "the child complete reasonable community service requirements." Id. section 54.021(d)(4).

The offense provided for in Education Code, section 4.25, a parent's continued failure to require a child's school attendance, is punishable, pursuant to Education Code, section 4.25, as amended by Senate Bill 7, 73rd Legislature, by a fine of not less than \$10 nor more than \$50 for the first offense, not less than \$20 nor more than \$100 for the second offense, and not less than \$50 nor more than \$200 for a subsequent offense.

LO-94-056: City Regulation Over Firearms

A home-rule city ordinance directed at the prevention of firearm discharges by children does not on its face violate Local Government Code, section 215.001, which bars municipal regulation of, inter alia, the “keeping of firearms,” since the ordinance falls within the field of regulation of the discharge of firearms specifically reserved to municipalities by the statute.

Juvenile Policy Topic:

Jurisdiction - Court Issues

GA-0131: Authority of a Juvenile Court to Detain a Child Before Adjudicating and Disposing of a Charge Such as Contempt of a Justice Court Order

Regardless of the type of delinquent conduct with which a child is charged, the child may be detained by a juvenile court before an adjudication hearing if a factor listed in §§ 53.02 or 54.01 of the Family Code is present. Accordingly, a child who is charged with contempt of a justice court order may be detained by a juvenile court if detention is warranted under §§ 53.02 or 54.01. A juvenile court may not order a child adjudicated for contempt of a justice court order to be placed in a secure correctional facility.

Clarifies and affirms JC-0454.

JC-0516: Applicability of Art. 103.0031, C.C.P. when a Defendant has Failed to Appear in a Class A Misdemeanor Case

The debts that may be collected under Art. 103.0031 are, according to the plain language of the statute, those which have been “ordered to be paid by a court.” Unless a court order has been issued, Art. 103.0031 is not applicable. Therefore, Art. 103.0031 is inapplicable in a case in which a justice of the peace has informally suggested an acceptable fine in connection with the issuance of an arrest warrant for the failure of a defendant to appear in a Class C misdemeanor case.

JC-0454: Authority of a Justice of the Peace to Sentence a Juvenile to Detention for Contempt, and Related Questions

A justice court may not order a child to be confined for a term of detention for contempt for violation of a justice court order. A hearing for a child referred to juvenile court for contempt must be conducted as that for a child who has engaged in delinquent conduct. Neither status offenders nor non-offenders may be detained in non-secure detention facilities.

In the event that suit is brought against a county as a result of a justice court ordering a child detained for contempt without authority to do so, the county could invoke immunity with respect to state claims. However, depending on the facts, the county could be subject to suit under federal claims brought under 42 U.S.C. §1983.

DM-464: Constitutionality of Senate Bill 1417, Acts 1997, 75th Leg., R.S., ch. 1327

Senate Bill 1417, which imposes a “time payment fee” on every convicted defendant who chooses to pay his fine, court costs, or restitution “over a period of time” rather than “immediately,” does not violate due process or equal protection under the Texas Constitution.

DM-439: Juvenile Court's Authority to Control the Terms of Detention

A county juvenile court is statutorily vested with authority over county juvenile detention facilities separate and apart from the authority of the juvenile board and commissioners court. A county contract with a private corporation regarding the operation of a juvenile detention facility is void to the extent it conflicts with section 51.12(b) of the Family Code.

DM-437: Court Authority and Residential Sex-Offender Signs

A condition of community supervision is authorized by article 42.12 of the Code of Criminal Procedure if it is unambiguous and bears a reasonable relationship to the treatment of the probationer and the protection of the public. A condition is unreasonable only if it has no relationship to the crime, it relates to conduct that is not in itself criminal, and it forbids or requires conduct that is not reasonably related to the future criminality of the defendant or does not serve the statutory ends of probation. A condition that restricts a fundamental right is valid and does not run afoul of constitutional guarantees if it is primarily designed to meet the ends of rehabilitation and protection of the public, and is reasonably related to such ends. A condition of community supervision requiring a defendant to post a warning sign at his residence stating that he is a convicted sex offender is not per se unauthorized by article 42.12 or unconstitutional.

DM-320: Court Jurisdiction Over Juvenile Drinking Crimes

Section 19 of article V of the Texas Constitution grants jurisdiction to justice courts in criminal matters in which the only possible sanction is a fine. Therefore, the justice courts do not have jurisdiction of prosecutions under sections 106.02, 106.04, and 106.05 of the Alcoholic Beverage Code, because those sections provide for the non-fine sanction of alcohol awareness education and because the legislature has not granted to the justice courts jurisdiction of prosecutions in which such a sanction may be imposed.

LO-98-069: Juvenile Court Without Jurisdiction After Probation Expires

Deferred prosecution probation pursuant to § 53.03 of the Family Code may not be revoked on account of an offense or offenses committed after the expiration of the probationary period.

LO-97-074: Juvenile Court Costs When a Modification Hearing is Waived

A court may not assess a fee for court costs in an order modifying disposition when a modification hearing has been waived.

LO-97-067: Retired Judges as Guardians Ad Litem

A former judge sitting by assignment is not precluded by section 74.055 of the Government Code from accepting appointment as a guardian ad litem in any suit in which the guardian would not be required to plead and appear in court as an attorney.

LO-92-023: Court Jurisdiction in Misdemeanor Cases

A justice court properly has jurisdiction only in those criminal cases in which the fine does not exceed \$500.

LO-92-014: Court Jurisdiction Over Juvenile Cases

The County Court of Taylor County does not have jurisdiction over juvenile matters. The Juvenile Board of Taylor County may designate one or more of the following as the Juvenile Court(s) of Taylor County: the District Courts of Taylor County and the Statutory County Courts of Taylor County.

Juvenile Policy Topic:

Child Support

DM-379: Child Support Obligor Contracting to Provide Medicaid Services

Providers that contract to participate in the Texas Medicaid Program must submit a statement regarding child support payments pursuant to section 231.006 of the Family Code.

DM-262: Seizing, Selling Property for Child Support Payments

Pursuant to a writ of execution issued to collect child support arrears, attorney fees, and interest, a constable may seize only that personal property of the obligor that sections 42.001, 42.002, and 42.0021 of the Property Code do not exempt from execution.

Rule 309 of the Texas Rules of Civil Procedure authorizes any holder of a child support lien to foreclose on the lien, regardless of whether the lien attached upon the filing of an abstract of judgment or a child support lien notice. On the other hand, section 14.979(a) of the Family Code requires a claimant to foreclose on the child support lien only if the lien attached by virtue of the filing of a child support lien notice that was not based on a valid, final court judgment finding the obligor in arrears and determining the amount of the arrearage. Section 14.979(a) does not require a claimant to foreclose on a child support lien that is predicated upon the filing of an abstract of judgment or a child support lien notice based upon a valid, final court judgment. Thus, if, prior to the issuance of the writ of execution, the claimant obtained an abstract of judgment and filed it for record in the appropriate county clerk's office thereby creating a child support lien, the constable may seize all of a child support obligor's non-homestead real property and all of the obligor's personal property. Likewise, if a claimant chooses to institute foreclosure proceedings upon a child support lien predicated upon the filing of an abstract of judgment, the constable may seize all of a child support obligor's non-homestead real property and all of the obligor's personal property.

DM-222: Child Support Modification

Unless § 14.08(h) of the Family Code applies, a district clerk must pay child support payments to the person designated in the existing child support order or in that portion of a divorce decree providing for child support. Thus, a district clerk must continue to pay the obligee designated in the court order even though the obligee has filed with the clerk a limited power of attorney authorizing a corporation to receive the child support payments and a request that the clerk send the child support payments to that corporation.

DM-97: Legitimation for Out-Of-Wedlock Children

The procedure for establishing "voluntary paternity" under sections 13.21 through 13.24 of the Family Code is essentially the same as the procedure for "voluntary legitimation" under the pre-1989 version of sections 13.21 through 13.24, and both procedures produce the same result. A child born out of wedlock whose paternity has been established pursuant to sections 13.21 through 13.24 of the Family Code is entitled to the same parent-child relationship and the same rights under Texas law as a child born in wedlock.

LO-93-094: Child Support and Writs of Income

Under § 14.45(h) of the Family Code, a district clerk may assess one fee not to exceed \$15.00 for issuing and delivering a writ of income withholding. See Acts 1993, 73rd Legislature, Chapter 417, § 4 (effective Sept. 1, 1993). The fee for issuing and delivering a writ of income withholding is no different if the person seeking the writ is being assisted by the Harris County Domestic Relations Office.

Juvenile Policy Topic: Transportation, Driving and Driver's Licenses

JC-0497: Continuing Education for Enforcement of Traffic and Highway Laws

A peace officer is not currently required by §644.101(d) of the Transportation Code to attend continuing education courses regarding enforcement of traffic and highway laws and the use of radar equipment.

JC-0451: Offense of Failure to Drive in a Single Marked Lane

The fact that a driver was asleep when he or she moved from the single lane does not as a matter of law remove that person's conduct from the scope of §545.060(a), Transportation Code. Although this office cannot determine in any particular instance in an attorney general opinion whether a person has violated a law, we believe a court would conclude that §545.060(a), Transportation Code, is a strict liability offense. In that case, a person who changes lanes while asleep may violate the statute.

JC-0409: Social Security Number as a Requirement for a Texas Driver's License

Pursuant to 42 U.S.C. § 666 (1994 & Supp. IV 1998) and Texas Family Code § 231.302, in order to aid in the collection of child support, the Texas Department of Public Safety must require any and all applicants for a Texas driver's license who possess a social security number to provide that number. An individual is not required to have a social security number as a condition of receiving a license.

JC-0337: Proper Use of Magnetic Stripe Information on Driver's License

Magnetic stripe information contained on a driver's license or identification card issued by the Department of Public Safety may be utilized only by law enforcement and other governmental agency personnel acting in their official capacities.

JC-0317: Certain Protest Words to a Traffic Citation Constitutes a Valid Promise

The addition of protest words to a signature on a traffic ticket has no effect whatsoever on the obligation of the ticketed party to appear in court.

DM-230: Justices of the Peace and Complaint Dismissals

Article 45.54 of the Code of Criminal Procedure does not permit a justice of the peace to dismiss a complaint against a defendant who has failed to successfully complete a driving safety course.

LO-98-027: Person Under 21 may be Prosecuted for DWI

Notwithstanding the enactment of section 106.041 of the Alcoholic Beverage Code, a person under age 21 may be prosecuted for the offense of driving while intoxicated under section 49.04 of the Penal Code.

LO-97-042: Driver's Safety Courses and "Yield" Violators

§ 550.022 of the Transportation Code mandates what action a driver must take when involved in an accident resulting in damage to a vehicle only. As long as the driver involved in such an accident follows these mandates, i.e., immediately stops the vehicle at the scene of the accident, or returns to the scene of the accident if unable to stop, and remains at the scene of the accident to provide information and aid, if necessary, the driver is not in violation of § 550.022.

A driver who fails to yield the right-of-way and has an accident resulting in damage to a vehicle only is eligible to take a driving safety course provided the driver complied with § 550.022.

LO-97-006: Constitutionality of Fingerprint Requirements

There is no constitutional impediment to the requirement now contained in § 521.142 of the Transportation Code that an applicant for an original, renewal, or duplicate driver's license submit his or her thumb or index fingerprints as part of such an application.

LO-96-131: DWI Convictions and Occupational Driver's Licenses

When a person files a petition to obtain an occupational driver's license, county and district clerks should charge the fee for filing an original civil suit or filing an original action, and assign a new cause number.

LO-96-118: County Fees for Motor Vehicle Interlock Devices

A county may not charge a fee to a defendant who is subject to art. 17.441 of the Code of Criminal Procedure, for the purpose of verifying the installation of and monitoring of a motor vehicle interlock device.

LO-93-061: Vehicle Registration and Emancipation Issues

The word "emancipation" is not used in the Family Code. Instead, Chapter 31 of the Code provides for a formal court proceeding for the removal of disabilities of minority.

The effect of a removal of disabilities for general purposes is to make the minor an adult in the eyes of the law, with capacity to contract. Parental emancipation of a minor, on the other hand, does not remove the minor's contractual incapacity. Emancipation does, however, shield from the parents' creditors' claims any property acquired thereafter by the minor. A minor whose disabilities have not been removed by court order or marriage generally may repudiate his or her contract for purchase of personal property, such as an automobile, and is entitled upon such repudiation to the return of the money he or she paid under contract.

Juvenile Policy Topic: Transportation of Juveniles

DM-87: Responsibility for Transportation of Juveniles

A county judge is not expressly empowered to order a sheriff or constable to transport persons to and from juvenile court. Unless it transfers the amount from another budgeted item, a county of less than 225,000 population may amend its budget to provide funds for transportation of juveniles only if the commissioners court finds that there exists a “grave public necessity to meet an unusual and unforeseen condition that could not have been included in the original budget through the use of reasonably diligent thought and attention.”

LO-94-065: Transportation by Sheriffs of Children to Juvenile Court

Under § 52.026(c) of the Family Code, the sheriff of a county in which a child is taken into custody is not required to transport the child to juvenile court proceedings absent the adoption of an order by the juvenile board and approval of the juvenile board’s order by record vote of the commissioners court. §§ 142.001 and 142.002 of the Human Resources Code require a juvenile probation officer to transport a child to juvenile probation proceedings if so ordered by a juvenile court.

LO-94-062: State Compensation for Felon Transportation

Convicted felons in county jails awaiting transfer to the state boot camp program are within the provisions of Chapter 499, subchapter F, of the Government Code, requiring state payment for inmates “awaiting transfer to the institutional division” of the Texas Department of Criminal Justice. Prisoners awaiting transfer to substance abuse felony program facilities are not, however, within the scope of subchapter F.

LO-92-067: Transportation of Prisoners Between Counties

When an arrest warrant is issued for an individual alleged to have committed an offense in county A, and the individual is arrested in county B, the sheriff of county A has the duty to arrange the transport of the individual back to county A.

Juvenile Policy Topic:

Health Care

DM-413: County Responsibility for Inmate Care

A hospital district is entitled, at the time it renders medical services to an inmate of the county jail who is not eligible for assistance, to payment from the inmate. The non-eligible inmate is ultimately liable for the costs of medical services he or she receives while incarcerated. If the inmate is unable to pay, the county of incarceration must pay but may seek reimbursement from another source.

DM-380: Parker County Hospital Responsibility for Inmate Care

The Parker County Hospital District must provide necessary medical and hospital care or reimburse the providers of such care to inmates of the county jail who reside in Parker County. If an inmate in the Parker County Jail is not a resident of Parker County, the county of the inmate's residence is responsible for the costs of the care provided. The Parker County Hospital may not bill another state if the inmate does not reside within this state.

DM-353: The Brady Bill and Medical Record Confidentiality

The federal Brady Act, in directing certain law enforcement officers to research "available" records in order to determine the lawfulness of a person's obtaining a handgun, does not require or authorize the Department of Mental Health and Mental Retardation to disclose client records which are otherwise confidential and unavailable to such officers under state law. This opinion does not address which particular records are or are not available to such officers under state law.

DM-225: Health Care Costs for Indigent County Inmates

Subject to the given caveats, the Karnes County Hospital District is responsible for the costs of medical care provided to its indigent residents incarcerated in the Karnes County Jail. Other hospital districts or public hospitals are responsible for such costs with respect to their indigent residents incarcerated in the Karnes County Jail. The county of residence of an indigent inmate of the Karnes County Jail who does not reside in a hospital district or public hospital service area is responsible for the costs of his medical care.

DM-131: Leases by a Hospital District for a Private Juvenile Facility

The Chambers County Hospital District is statutorily authorized to lease a part of its hospital facility to a group of private physicians for operation as an adolescent drug treatment center. Article III, section 52, of the Texas Constitution requires that the lease serve a public purpose and provide for payment of adequate rentals, and article IX, section 9 requires that any hospital facility serve a hospital purpose and provide care for the needy inhabitants of the district. Section 263.001 of the Local Government Code, requiring sale or lease by public auction, is not applicable to the district's lease of its hospital facility.

DM-111: Sheriff's Authority Over County Medical Services

A county commissioners court has the authority to contract with a licensed physician to provide medical services to inmates incarcerated in the county jails. A county sheriff has the authority to schedule medical services for the county jails.

LO-98-122: Chapter 264 of the Family Code and Autopsy of Children

The obligation of the commissioner of health to review and authorize payment of claims for the reasonable and proper cost of autopsies conducted pursuant to Health and Safety Code § 673.002 has been superseded by Chapter 264, Family Code. Children younger than two who die suddenly of an unknown cause would be included within the scope of Chapter 264 and an autopsy would be required in the course of the death investigation.

LO-96-102: Subpoenaed Health Professionals and Disclosure

A psychologist is authorized to disclose confidential information about a patient in a judicial or administrative proceeding where the court or agency has issued an order or subpoena without receiving a written waiver of confidentiality from the patient or patient's representative. A rule of the Board of Examiners of Psychologists interpreted by the board as requiring such a waiver is invalid to the extent of inconsistency with the exception to the confidentiality requirement found in § 611.006(a)(11) of the Health and Safety Code. If a psychologist has received a subpoena for patient mental health records believed to be privileged by rule 510 of the Rules of Evidence, he or she may raise the claim of privilege under applicable provisions of the Rules of Civil Procedure. Although it may be advisable for a psychologist to notify a patient that his records have been subpoenaed, we cannot determine that the action would be either necessary or sufficient to protect the psychologist from liability in tort in the event that the patient's privileged mental health information is disclosed in a judicial proceeding.

LO-93-100: Health Care Services for County Indigent Inmates

The question of which health care services the Karnes County Hospital District is responsible for providing indigent residents of the district is to be determined in the first instance by the board of directors of the district.

LO-92-039: Psychologists' Information in Court

Pursuant to Texas Rule of Civil Evidence 510(d)(6), a licensed psychologist may disclose privileged information if the information is relevant in any suit affecting the parent-child relationship. The Opinion Committee will not issue an opinion that effectively overrules a judicial decision.

Juvenile Policy Topic:

Miscellaneous

GA-0125: Classification of a “Missing Child” if Legal Custodian knows the Minor’s Whereabouts

While a child under 17 who is voluntarily absent from home without the consent of his or her parent or guardian “for a substantial length of time or without intent to return” may be taken into custody by a law enforcement officer under provisions of the Family Code, a 17-year-old who engages in the same conduct may not be.

A child, including an unemancipated seventeen-year-old, who voluntarily leaves the care and control of his or her legal custodian without the custodian’s consent and without intent to return is not a “missing child” under Chapter 63 of the Code of Criminal Procedure if the custodian knows where the child is located. If the custodian determines the child’s location after filing a missing child report and notifies the investigating law enforcement agency, the agency has no duty to continue the investigation or to take possession of the child and return him or her to the custodian.

GA-0109: Definition of “In The Custody of a Peace Officer” for Purposes of Art. 49.18 of the Code of Criminal Procedure

In 2003, the 78th Legislature amended art. 49.18 of the Code of Criminal Procedure to define a death “in the custody of a peace officer” as the death of a person who is either under arrest or under the actual physical control or restraint of a peace officer.

GA-0106: Reporting and Investigating Child Sexual Abuse

Chapter 261 of the Family Code provides for reporting and investigating child sexual abuse, including specific kinds of sexual conduct. Law enforcement officers, whether on or off duty, are required to report suspected child sexual abuse when they have cause to believe that sexual abuse has occurred or is occurring.

The Department of Family and Protective Services (DFPS) is required to investigate a report of child sexual abuse “allegedly committed by a person responsible for a child’s care, custody, or welfare,” with assistance provided by the appropriate state or local law enforcement agency. DFPS is not required to investigate a report that alleges child sexual abuse by a person other than a person responsible for a child’s care, custody, or welfare. The appropriate state or local law enforcement agency shall investigate the report if the agency determines an investigation should be conducted. Whether a specific person has cause to believe that a child has been a victim of sexual abuse depends on the facts within that person’s knowledge.

JC-0561: Texas Interagency Council on Early Childhood Intervention and Personally Identifiable information Regarding Children

The Texas Interagency Council on Early Childhood Intervention is authorized by state and federal law to require local service providers to submit personally identifiable information about children and their families for the purpose of evaluating federally and state funded programs. The Council may not re-disclose the information except in compliance with federal law. Additionally, the Public

Information Act applies to such information in the possession of the Council and provides that a person commits official misconduct “if the person distributes information considered confidential under the terms of this chapter,” and offense punishable by a fine of not more than \$1,000, up to six months of confinement, or both.

JC-0309: Child Under the Age of 14 Soliciting Newspapers

A child under the age of 14 years may not be employed to “solicit” newspaper subscriptions except when the child concurrently attempts to sell a newspaper while “soliciting” the subscriptions and when the same child will be delivering the newspaper based on the new subscription. The Texas Workforce Commission may not require parental consent forms of persons engaged in an activity that meets these criteria.

JC-0229: Authority of Law Enforcement to take Missing Child into Custody

Art. 63.009(g) of the Code of Criminal Procedure requires a police officer who locates a 17 year old who has been reported as a missing child to take possession of the child and to deliver the child to the person entitled to his or her possession or to the Department of Protective and Regulatory Services. The detention of an unemancipated 17 year old against his or her wishes for the purpose of returning the child to his or her parent or guardian does not violate the child’s constitutional rights. An officer may use force to take possession of a missing child, but only to the degree the officer reasonably believes it is necessary to safeguard or promote the child’s welfare consistent with the protective purpose of Art. 63.009(g).

JC-0226: State Agency’s Interference With a Parent’s Rights

When a state agency attempts to interfere with the fundamental right of a parent to direct the upbringing of his or her child, it must, in order to do so, satisfy the constitutional standard of “compelling state interest.”

DM-458: Reporting Possible Child Abuse

A person who suspects that a child has been abused or neglected must report that suspicion immediately to the appropriate authorities.

DM-411: Interpreters for Deaf and Hearing-Impaired Persons

Parties and witnesses to juvenile detention hearings who are deaf or hearing impaired, like all such parties and witnesses in civil cases, are entitled to the services of a qualified interpreter. A grand juror is also entitled to the services of an interpreter.

DM-364: Concealed Handgun on Rapid Transit or in County or City Park

The concealed handgun law did not affect the power of a rapid transit authority to prohibit the carrying of handguns on its vehicles by persons other than employees of the rapid transit authority. The reasonableness and necessity of a measure taken under the rapid transit authority's police power is a matter within the authority's discretion.

The legislature did, however, specifically take away from a municipality the authority to prohibit the licensed carrying of a concealed handgun in a city or county park. A county, though, has the authority to adopt a rule providing for the exclusion or ejection of persons carrying handguns from county parks if such a rule is reasonably necessary and appropriate for the accomplishment of a legitimate object falling within the county's police power under section 331.007 of the Local Government Code.

DM-363: Scope of the Concealed Handgun Law

The concealed handgun law prohibits the carrying of a concealed handgun on the physical premises of a school, an educational institution, or a passenger transportation vehicle of a school or an educational institution (whether public or private), unless pursuant to written regulations or written authorization of the institution; on the premises of a polling place on the day of an election or while early voting is in progress; in any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court; on the premises of a race track; into a secured area in an airport; on the premises of a business that has a permit or license issued pursuant to the Alcoholic Beverage Code, if the business derives 51 percent or more of its income from the sale of alcoholic beverages for on-premises consumption; on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place, unless the license holder is a participant in the event and a handgun is used in the event; on the premises of a correctional facility; on the premises of a hospital or nursing home, unless the license holder has written authority; in an amusement park; on the premises of a church, synagogue, or other established place of religious worship; or at any meeting of a governmental body.

Private property owners are not precluded from excluding license holders carrying concealed handguns from their premises under criminal trespass.

DM-344: Betting on Card Games Via Computers, Electronic Devices

Where two or more persons, each using a separate personal computer and modem or other data transmission device in a private place, play a card game with each other and bet on the outcome of the card game, the activities would be illegal under the gambling provisions set out in Chapter 47 of the Penal Code unless there was no “public” access to the games, no one benefitted other than by personal winnings, and the risk of winning or losing was the same for all participants. A third party’s operation of a bulletin board service, by means of which he knowingly assisted persons in playing and betting on card games located on that bulletin board service and charged for the services used by the persons playing the game, would violate one or more of the penal provisions of Chapter 47 of the Penal Code.

DM-238: Employee Termination for Criminal Convictions

Pursuant to section 106.008(a) of the Human Resources Code, a facility that voluntarily obtains a criminal conviction check of an employee “licensed under other law” is required to terminate the employee in the event the check reveals a conviction of an offense listed under section 106.003(b).

DM-212: Police Officers as Part-time Security Guards

Article XVI, section 40, does not as a matter of law prohibit city police officers and sheriff's deputies from serving as part-time security officers for a school district. City police officers, sheriff's deputies, and school-district security officers do not hold "civil offices" as a matter of law as that term is used in article XVI, section 40. Previous attorney general's opinions concluding to the contrary are overruled. We cannot determine, however, whether article XVI, section 40 prohibits any particular police officer or sheriff's deputy from serving as a security officer for a school district. Determining whether a particular city police officer, sheriff's deputy, or school-district security officer holds a civil office raises questions of fact, which cannot be addressed in the opinion process.

We can find nothing in Texas law that would prevent a school district from contracting with a private security service for security officers.

DM-123: Commissioners Court Fees in Criminal Cases

Section 51.702(h) of the Government Code, which authorizes a commissioners court to adopt a resolution requiring the payment of an additional \$10.00 in court costs for each criminal conviction in a statutory county court, is ineffective on both due process and equal protection grounds. We do not decide whether section 25.0015, which authorizes payment by the state to each county of \$25,000 for each statutory county court judge, is valid.

DM-119: Temporary Emergency Housing for County Inmates

Only a traditional county jail is subject to the requirements of Chapter 351 of the Local Government Code. "Alternative incarceration facilities" are subject only to the regulations of the Commission on Jail Standards. As to such facilities, the commission may promulgate minimum standards which authorize (1) facilities for temporary purposes; (2) remedies for non-compliance other than closure of a facility; (3) facilities intended to be used for longer than one year; and (4) facilities which are not constructed of masonry, metal or comparable material.

DM-71: Public Housing Authority's Authority Over Tenants' Firearms

Section 215.001 of the Local Government Code prohibits a municipal housing authority from adopting a regulation providing for a tenant's eviction for the otherwise legal possession of a firearm.

LO-96-150: Protesting Crack Houses

Whether a particular demonstration by a group of private citizens would violate section 42.01 of the Penal Code, which prohibits disorderly conduct, is a question of fact which cannot be determined in the opinion process. However, the fact that demonstrators are engaged in expressive conduct is not by itself a defense against prosecution for such a violation. The disorderly conduct statute's restrictions on protected speech are facially constitutional.

A group of private citizens who receive information from law enforcement about the location of known “crack houses” or the residence of known drug dealers, and who thereupon organize demonstrations at such locations in an attempt to discourage traffic in illegal narcotics cannot, as a matter of law, violate Penal Code section 39.03, which prohibits official oppression, nor do the provision or receipt of such information violate section 39.06 of the Penal Code, which prohibits misuse of official information.

LO-96-140: False Alarms as Crimes of “Moral Turpitude”

The offense of communicating a false alarm, in contravention of section 42.06 of the Penal Code, is a crime of “moral turpitude.”

LO-96-078: Justices of the Peace as Juvenile Law Masters

Neither section 33 nor section 40 of article XVI of the Texas Constitution prohibits a justice of the peace from serving as a Bexar County part-time juvenile law master, regardless of whether the justice of the peace accepts compensation for the latter position. The two positions are not incompatible as a matter of law.

LO-96-075: Attorney Compensation for Victims of Family Violence

Attorney’s fees awarded to prosecuting attorneys under section 71.041(d) are not analogous to the “hot check fund” created by article 102.007(f) of the Code of Criminal Procedure, and must be administered and disbursed in accordance with the ordinary county budgeting process.

LO-96-037: Funeral Expenses for Children in DPRS

The Texas Department of Protective and Regulatory Services (DPRS) is not responsible for the burial expenses of children for whom the department has been named the permanent managing conservator upon termination of parental rights.

LO-96-034: Polygraph Exams for Sexual Assault Complaints

Article 15.051 of the Code of Criminal Procedure does not authorize a peace officer to request that a person who charges or seeks to charge in a complaint the commission of an offense under Penal Code, sections 21.11, 22.011, 22.021, or 25.02 voluntarily to submit to a polygraph examination.

LO-96-033: Peace Officers as Community Supervision Officers

Subsection (c) of section 76.005 of the Government Code prohibits a person’s simultaneous employment as a peace officer, even if uncompensated for that position, and as a community supervision officer.

LO-96-021: Security Guard Authority in Criminal Situations

A private security guard is not a peace officer, and therefore has no greater powers of arrest than any private citizen.

LO-95-004: Abolishment of the Children’s Trust Fund

Under section 403.094 of the Government Code, the dedicated revenue source for the Children’s Trust Fund set forth in section 118.022 of the Local Government Code will cease to exist on August 31, 1995, unless the legislature takes certain action before that date. The Children’s Trust Fund, and the corpus of that fund as of August 31, 1995, are not subject to abolition under section 403.094 and will continue to exist after that date. The Children’s Trust Fund is excepted from section 403.095(b) of the Government Code by operation of subsection (b)(2).

LO-94-091: Court Referendum on Age of Criminal Responsibility

Absent specific statutory authority permitting it to do so, the Harris County Commissioners Court may not place a non-binding referendum concerning the age of criminal responsibility on the ballot.

LO-94-039: Emancipated Minors and Term “Child”

The term “child” in section 573.024(b) of the Government Code, which defines relationship by affinity for purposes of state nepotism prohibitions, includes an adult child who is no longer a dependent. The relationship by affinity created by marriage survives divorce or the death of a spouse for the lifetime of any children of the marriage. Therefore, Chapter 573 of the Government Code prohibits the board of trustees of an independent school district from voting to hire the ex-wife of a trustee regardless of the age and status of the surviving child of the marriage.

LO-93-082: Contracting with Organizations for CASA Programs

The Office of the Attorney General, as the successor agency to the Office of Court Administration for purposes of administering court-appointed volunteer advocate programs for abused or neglected children, may contract with one “statewide organization” both to administer the overall program and to subcontract with various “eligible volunteer advocate programs.” In accordance therewith, the “statewide organization” is eligible to receive up to 12 percent of funds appropriated for the overall program.

LO-93-061: Emancipation Issues and Motor Vehicle Registration

The word “emancipation” is not used in the Family Code. Rather, Chapter 31 of the Code provides for a formal court proceeding for the removal of disabilities of minority.

The effect of a removal of disabilities for general purposes is to make the minor an adult in the eyes of the law, with capacity to contract. Parental emancipation of a minor, on the other hand, does not remove the minor’s contractual incapacity. Emancipation does, however, shield from the parents’ creditors’ claims any property acquired thereafter by the minor. A minor whose disabilities have not been removed by court order or marriage generally may repudiate his or her contract for purchase of personal property, such as an automobile, and is entitled upon such repudiation to the return of the money he or she paid under contract.

LO-93-046: The Parrie Haynes Ranch and the Asylum Fund Provision

Article VII, section 9 of the Texas Constitution does not require the Parrie Haynes Ranch, property willed to the State Orphans Home for the benefit of orphaned children, to be placed in the asylum fund established by that provision.

LO-92-057: Minimum Age Requirement for Acquisition of Tattoos

Under the provisions of Chapter 161 of the Health and Safety Code, as modified by section 129.002 of the Civil Practice and Remedies Code, the minimum age for obtaining a tattoo in Texas is 18 years.

Juvenile Crime Intervention Resources

Publications and services available from the Juvenile Crime Intervention:

- *Gangs 101*
(gang awareness training for parents and other adults who work with youth)
- *Gangs and Community Response*
(brochure available in English and Spanish)
- *Gangs in Texas: An Overview*
(gang report based on statewide survey of law enforcement and prosecutors)
- *Index of Juvenile Justice Opinions of the Attorney General*
(only available on the Attorney General's Web site at www.oag.state.tx.us)
- *Penal Code Offenses by Punishment Range*
(only available on the Attorney General's Web site at www.oag.state.tx.us)
- *School Crime and Discipline Handbook*
(reference guide to Texas education law)
- *Juvenile Justice Handbook*
(reference guide to Texas juvenile law)
- *Searchable Program Catalog*
(interactive database of prevention and intervention resources for youth and their families, available on the Attorney General's Web site at www.oag.state.tx.us under Criminal Justice)

For More Information, Contact:

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Criminal Law Enforcement Division
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