

juvenile justice handbook

including updates from the
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*a practical
reference guide*



ATTORNEY GENERAL OF TEXAS
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I. Understanding the Juvenile Justice System in Texas

In 1973, the Texas Legislature enacted Title 3 of the Family Code, which formed the statutory basis for juvenile law in this state. It was enacted with the following goals:

- to provide for the care and development of a child;
- to remove the stigma of criminality from the unlawful acts of a child;
- to separate a child from his or her parents only when necessary and to give the child needed care; and
- to provide a simple judicial procedure to ensure a fair hearing and enforcement of constitutional rights.

The Family Code attempted to balance the needs and rights of children against the safety needs of the community. Unfortunately, the 1973 Family Code was written for a different kind of juvenile offender from the type we presently have. The Texas juvenile justice system at the time was not fully equipped to deal with the number of juveniles committing offenses or with the extreme violence frequently perpetrated by juveniles.

In 1995, the Legislature revised Title 3 of the Family Code by creating the Juvenile Justice Code. This code was enacted with the following goals:

- to strengthen public safety;
- to promote the concept of punishment for criminal acts;
- to remove, where appropriate, the taint of criminality from children committing certain unlawful acts; and
- to provide treatment, training, and rehabilitation that emphasizes the accountability and responsibility of both the parent and the child for the child's conduct. (§51.01, F.C.)

This *Juvenile Justice Handbook* provides an overview of the modern juvenile justice system in Texas. It is intended for law enforcement, parents, educators, and anyone seeking information about the juvenile court process and the youth who become involved in the system. Part I introduces the juvenile system, starting with the state and local agencies and officials who implement the law. Parts II and III describe the system from the point when a child is first reported to law enforcement authorities, through intake, adjudication, disposition, and imposition of the court's order. Part IV describes a new chapter in the Family Code titled *Rights and Responsibilities of Parents and Other Eligible Persons* and Part V reviews the types of cases involving children that are handled by justice and municipal courts. These step-by-step descriptions will help the reader to understand what happens to a child who becomes involved in the juvenile justice process. We hope this handbook will be useful to anyone interested in learning more about our unique and innovative juvenile justice system in Texas.

State Agencies that Address Juvenile Crime

In Texas, the two state agencies primarily involved in the juvenile justice system are the Texas Youth Commission (TYC) and the Texas Juvenile Probation Commission (TJPC). In addition, the Department of Family and Protective Services¹ (DFPS), and other state agencies have departments, programs, and/or services for youth. Contact information for these state agencies is provided in the Appendix on page 45.

Texas Youth Commission (TYC)

TYC is the state agency that provides for the care, custody, treatment and rehabilitation of the most serious juvenile offenders. It operates the state's juvenile correctional facilities, as well as community-based facilities and programs. TYC also contracts with private sector residential and non-residential service providers for secure correctional facilities and other programs.² Additionally, the agency provides active parole supervision for juveniles until they are officially discharged from the custody of TYC. (§61.002, H.R.C.)

TYC uses individual treatment plans to focus on offenders' specific needs. All TYC youth must work on an individual case plan and progress through a re-socialization program. Youth with particular needs may also be required to participate in specialized treatment programs designed for capital offenders, sexual offenders, emotionally disturbed and chemically dependent youth.

TYC is also responsible for the parole of juveniles who are released from its correctional facilities. Parole is the follow-up supervision of youths who have been released into their communities. (§61.081, H.R.C.) If and when a juvenile is released on parole is within the exclusive discretion of TYC and the agency may retain jurisdiction over a parolee until his or her 21st birthday. TYC may require as a condition of releasing a juvenile offender on parole for a sexual offense that the individual attend sex offender counseling and treatment. (§61.0813, H.R.C.) Treatment records and all other information concerning a child, including personally identifiable information, are not available to the public. (§61.073, H.R.C.; *see also*, §58.005, F.C.)

Texas Juvenile Probation Commission (TJPC)

TJPC is the state agency responsible for overseeing juvenile probation services in Texas. (§141.041, H.R.C.) Probation is the follow-up supervision provided to a youth by order of a juvenile court judge. (§142.001, H.R.C.)

TJPC was created by the Texas Legislature in 1981 to bring consistency and quality to juvenile probation services throughout the state. The legislature mandated the following purposes for the agency:

- to make probation services available to juveniles throughout Texas;
- to improve the effectiveness of juvenile probation services;
- to provide alternatives to the commitment of juveniles by providing financial aid to juvenile boards to establish and improve probation services;
- to establish uniform standards for the community-based juvenile justice system;

- to improve communications among state and local entities within the juvenile justice system; and
- to promote delinquency prevention and early intervention programs and activities for juveniles. (§141.001, H.R.C.)

TJPC performs a variety of key functions in our juvenile justice system. Some of these functions include:

- adopting standards relating to local probation departments (§141.0421, H.R.C.);
- providing educational training and technical assistance to local authorities (§141.043, H.R.C.);
- developing a coordinated strategic plan for the juvenile justice system (§141.0471, H.R.C.);
- establishing minimum standards for juvenile probation officers (§141.061, H.R.C.);
- allocating funds annually for financial assistance to juvenile boards (§141.081, H.R.C.); and
- funding and constructing post-adjudication residential or treatment facilities (§141.086, H.R.C.).

If a county discontinues probation services, TJPC may directly provide probation or detention services in that county. (§141.041, H.R.C.) Otherwise, TJPC does not directly provide services to juveniles, leaving this up to the local probation departments as implemented by their county juvenile boards.

The Juvenile Justice System at the Local Level

In Texas, the juvenile justice system functions primarily at the county or local level. Most juvenile offenders are processed through county courts, under the guidance of the county juvenile boards.

Juvenile Boards

Each county in Texas has a juvenile board that is responsible for administering juvenile probation services at the local level. Membership on the board will vary depending on the statute that created the individual juvenile board, but typically all district and county court judges are board members. In addition, each juvenile board must appoint an advisory council of no more than nine citizen members, including a prosecuting attorney, a mental health professional, a medical health professional and a representative of the education community. (§152.0010, H.R.C.)

By law, the duties of the juvenile board include:

- establishing a juvenile probation department;
- employing a chief probation officer; and
- adopting a budget and establishing policies, including financial policies, for juvenile services within the board’s jurisdiction. (§152.0007(a), H.R.C.)

The juvenile board controls the “conditions and terms of detention and detention supervision,” and a majority of the board must “personally inspect” the juvenile detention and correctional facilities located in their county at least annually. (§51.12(b), (c), F.C.)

Juvenile boards receive their funding from state aid and other sources, such as probation fees. TJPC allocates funds for financial assistance to the local juvenile boards annually, based on the juvenile population in their respective counties and other factors the commission determines are appropriate. (§141.081, H.R.C.)

Juvenile Courts and Judges

Juvenile boards designate the juvenile court or courts within their jurisdiction and appoint the judges who oversee them. (§51.04(b), F.C.) A district court judge, a county court-at-law judge or a county judge may be appointed as a juvenile court judge. One juvenile court may serve several counties.

If a county court is designated as a juvenile court, at least one alternate court within the county must also be designated as the juvenile court. (§51.04(c), F.C.) Although the juvenile board may change the designation of the juvenile court, “there must be at all times a juvenile court designated for each county.” (§51.04(e), F.C.) Justice and municipal courts may not be designated as juvenile courts.

Juvenile Court Referees and Magistrates

There are several other types of judicial officers who may also handle juvenile cases. The juvenile board may appoint one or more “referees” to conduct juvenile hearings, including detention hearings, when a juvenile judge is unavailable. (§§51.04(g) and 54.01(l), F.C.) The referee does not have to be a judge, but he or she must be an attorney licensed to practice law in Texas. The referee is authorized to conduct hearings and to make written findings and recommendations to the juvenile court judge. That judge may later accept or reject the referee’s recommendations in full or in part. (§54.10(d), F.C.)

When a juvenile court judge is unavailable to preside over a detention hearing, any magistrate is authorized to conduct a detention hearing to consider the release of a juvenile. (§51.04(f), F.C.) A magistrate is any judge, including a justice or municipal court judge. (Art. 2.09, C.C.P.) (See p.16 for a more detailed discussion about *The Detention Hearing*.)

Justice and Municipal Courts

Justice and municipal courts also play an important role in the juvenile justice system and are collectively known as “local trial courts of limited jurisdiction.”³ These courts handle most Class C misdemeanors punishable by fine only, as well as city ordinance violations involving juveniles. (Arts. 4.11 and 4.14, C.C.P.) Common examples include failure to attend school cases, minor assaults and theft, as well as tobacco and alcohol violations. They may also conduct detention hearings when juvenile judges are unavailable. (See Part IV for a more detailed discussion of “Juveniles in Justice and Municipal Courts.”)

Local Juvenile Probation

Local juvenile probation departments carry out the policies of the juvenile boards and provide services to juveniles who are referred to juvenile court. There are 120 single-county departments and 44 multi-county (two to six counties) departments in Texas.⁴ These probation departments are staffed by certified juvenile probation and detention officers. Probation officers are responsible for

supervising juveniles both before and after being placed on probation, as well as arranging for necessary counseling, diagnostic, correctional and educational services, in response to an order issued by a juvenile court. (§142.001, H.R.C.)

Chief Juvenile Probation Officers

The chief juvenile probation officer (CJPO) is selected and hired by the juvenile board and reports directly to the board. The CJPO is responsible for the daily operations of the probation department and, in smaller counties, will often supervise the juveniles who have been placed on probation.⁵ The CJPO may, within the budget adopted by the board, employ assistant officers and other necessary personnel. (§152.008, H.R.C.) It may be helpful to think of the CJPO as the chief executive officer who acts on behalf of the juvenile board.⁶

Juvenile Prosecuting Attorney

Every county has a juvenile prosecuting attorney, who may be an Assistant District Attorney or an Assistant County Attorney. The juvenile prosecutor represents the State of Texas and is responsible for promptly reviewing the circumstances and allegations of every juvenile case that is referred to juvenile court. A juvenile prosecutor must determine whether a given case is legally sufficient and worthy of prosecution and may formally charge a child with committing a crime by filing what is known as a petition. (§§53.012(a) and 53.04(a), F.C.)

If a petition is not filed, the prosecuting attorney must:

- terminate all proceedings, if the reason is for lack of probable cause; or
- return the referral to the juvenile probation department for further proceedings. (§53.012(b), F.C.)

II. Steps in the Juvenile Justice Process

Definition of “Child”

Whether a child is subject to the jurisdiction of a juvenile court will depend primarily on his or her age. For juvenile law purposes the Family Code defines a “child” as a person who is:

- ten years or older and under 17; or
- 17 years or older and under 18, who is alleged or found to have engaged in **delinquent conduct** or **conduct indicating a need for supervision** as a result of acts committed before turning 17. (§51.02(2), F.C.)

Delinquent conduct is conduct, other than a traffic offense, that violates a criminal law of Texas or of the United States and is punishable by imprisonment or by confinement in jail. (§51.03(a)(1), F.C.)

Conduct indicating a need for supervision (CINS) is conduct, other than a traffic offense, involving fine-only offenses such as public intoxication, truancy, running away, inhalant abuse, expulsion from school, or violation of a “child at-risk” court order. (§51.03(b), F.C.)

This means that a juvenile court typically loses its jurisdiction, or authority, to handle any juvenile case when a person turns 18.

Although children under ten cannot be prosecuted for committing crimes, DFPS may provide services for children as young as seven who are at-risk for getting into trouble and for their families. (§264.302, F.C.)

When a Child is Reported to a Law Enforcement Agency

Parents, school personnel, community officials or other concerned citizens may contact a local law enforcement agency regarding the conduct of a juvenile. In most cases, local law enforcement officials serve as the intermediaries who refer the child to the juvenile justice system. There are several options available to law enforcement for handling a juvenile offender who is reported to the police.

Providing Warning Notices

For certain minor offenses, a peace officer may issue a **warning notice** to a child instead of taking the child into custody. (§52.01(c), F.C.) When a child is released with a warning, a copy of the warning notice is sent to the child’s parent, guardian or custodian as soon as “practicable” and a copy of the warning must be filed with the office or official designated by the juvenile board. (§52.01(c)(5) and (6), F.C.)

A **warning notice** is similar to a traffic citation and may be used as the basis for further legal action. (§52.01(d), F.C.)

In any case, a peace officer may not detain a child without having **probable cause** to believe that illegal conduct has been committed. (§52.01(a), F.C.) Having a suspicion or a mere hunch that a child was involved in unlawful conduct is not enough to detain him or her.

Probable cause exists when law enforcement has reasonably trustworthy information sufficient to cause a reasonable person to believe that a particular suspect has committed or is committing a crime. *Leday v. State*, 3 S.W.3d 667, 673 (Tex.App.-Beaumont 1999)

Taking a Child into Custody

If a peace officer decides to take a child into custody, the officer may transport the child to an officially designated **juvenile processing office**, where the juvenile may be kept for up to six hours. (§52.025(d), F.C.) A child may be detained in a juvenile processing office only for:

A **juvenile processing office** is an office or a room in a police station or sheriff’s office used for the temporary detention of a child taken into custody. It may not be a cell or holding facility used for other types of detentions. A child may not be detained in a juvenile processing office for longer than six hours. (§52.025, F.C.)

- return of the child to a parent or other responsible adult;
- completion of essential forms and records;
- photographing and fingerprinting of the child, if authorized;
- issuance of warnings to the child as required by law; or
- taking a statement from the child. (§52.025(b), F.C.)

A child may not be left unattended in a juvenile processing office and is entitled to be accompanied by a parent, guardian or other custodian, or by the child’s attorney. (§52.025(c), F.C.) A new law now guarantees the parent of a child taken into custody the right to communicate in person privately with the child for reasonable periods of time while the child is in a juvenile processing office. (§61.103(a)(1), F.C.; see p. 35 dealing with *Rights of Parents*)

A **juvenile detention facility** must keep juveniles separated by sight and sound from adults detained in the same building. Children and adults are separated by sight and sound only if they are unable to see or talk to each other. The separation must extend to all areas of the facility and can be accomplished through architectural design. (§51.12(f), F.C.)

If the child is not released to the parent or guardian, it becomes the law enforcement officer’s duty to transport the child to the appropriate **juvenile detention facility**. If the detention facility is located outside the county in which the child is taken into custody, it becomes the responsibility of the law enforcement officer who took the child into custody to transport the child to an out-of-county facility. (§52.026(a) and (b), F.C.) A parent also has the right to communicate in person privately with the child for reasonable periods of time while the child is in a secure detention or correctional facility. (§61.103(a)(1), F.C.)

Texas law permits a juvenile to be taken into custody under the following circumstances:

- pursuant to an order of the juvenile court;
- pursuant to the laws of arrest;
- by a law enforcement officer if there is probable cause to believe a child has violated a penal law of this state, has committed delinquent conduct or CINS, or conduct that violates a condition of probation imposed by the juvenile court;
- by a probation officer if there is probable cause to believe a child has violated a condition of probation imposed by the juvenile court; or
- pursuant to a **directive to apprehend**. (§52.01(a), F.C.)

A **directive to apprehend** is a juvenile court order authorizing any law enforcement or probation officer to take a child into custody if the court finds there is probable cause to do so. (§52.015, F.C.)

Taking a child into custody is not considered an arrest. (§52.01(b), F.C.) If asked, a child who has been taken into custody may truthfully state that he or she has never been arrested.

Juvenile Confessions

The Family Code contains very specific provisions that govern the taking of juvenile confessions by law enforcement. These provisions amount to special protections that are afforded to juvenile suspects after they have been taken into custody. For example, a child must first be taken to a juvenile processing office “without unnecessary delay and without first taking the child to any [other] place.” (§52.02(a), F.C.) A person taking a juvenile into custody must also “promptly give notice” of the person’s action and a statement of the reason for taking the child into custody, to:

- the child’s parent, guardian or custodian; and
- the office or official designated by the juvenile board. (§52.02(b), F.C.)

Before making a written confession, the child must receive from a magistrate a warning that:

- the child may remain silent and not make any statement and that any statement the child makes may be used in evidence against the child;
- the child has the right to have an attorney present to advise the child either before to or during any questioning;
- if the child is unable to employ an attorney, the child has the right to have an attorney appointed to counsel with the child before or during any interviews with peace officers or attorneys representing the state; and
- the child has the right to terminate the interview at any time. (§51.095(a)(1)(A), F.C.)

The magistrate must also ensure that the child is voluntarily waiving, or giving up, these rights before and during the making of the statement. (§51.095(a)(1)(C), F.C.)

After the magistrate determines that a child wishes to waive his or her rights and wants to give a statement, the child can be returned to the juvenile processing office by law enforcement for an interview and to obtain a written confession. The statement, however, cannot be signed until the child is again brought before the magistrate. The Family Code requires that the confession be signed in the presence of a magistrate by the child with no law enforcement officer or prosecuting attorney present. The magistrate must also be fully convinced that the child understands the nature and content of the statement, and that the child is signing it voluntarily. (§51.095(a)(1)(B), F.C.) Finally, the magistrate must certify that the child knowingly, intelligently and voluntarily waives his or her rights before and during the making of the statement and that the child understands the nature and contents of the statement. (§51.095(a)(1)(D), F.C.)

After this process is completed, law enforcement must do one of the following:

- release the child to the parent or guardian;
- bring the child before the office or official designated by the juvenile board, if there is probable cause to believe that an offense has been committed or for conduct that violates a condition of probation imposed by the juvenile court;
- bring the child to a detention facility designated by the juvenile board;
- bring the child to a secure detention facility (if a juvenile detention facility is not available in the county where the child is taken into custody);
- bring the child to a medical facility if it is believed prompt treatment is required; or
- dispose of the case without a referral to juvenile court if the law enforcement agency has established guidelines for such a disposition under §52.03, F.C. (§52.02(a), F.C.)

Fingerprinting and Photographing

As a general rule, a child may not be fingerprinted or photographed without the consent of the juvenile court, unless the child is taken into custody or referred to the juvenile court for conduct that constitutes a felony or a misdemeanor punishable by confinement in jail (Class B or above). (§58.002(a), F.C.) Other exceptions to the general rule include fingerprinting and photographing a child with a parent or guardian's voluntary written consent, or for the purpose of obtaining a driver's license or personal ID card, or for inclusion in the missing children information clearinghouse. (§58.002(c) and (d), F.C.; Ch. 63, C.C.P.)

Another exception allows a peace officer to place a child in temporary custody in order to take the child's fingerprints if:

- the officer has probable cause to believe the child engaged in delinquent conduct;
- the officer investigated that conduct and found other fingerprints during the investigation; and
- the officer has probable cause to believe the child's fingerprints will match the other fingerprints. (§58.0021(a), F.C.)

A peace officer may also take temporary custody of a child to take the child's photograph if:

- the officer has probable cause to believe the child engaged in delinquent conduct; and
- the officer has probable cause to believe the child's photograph will be of material assistance in the investigation of that conduct. (§58.0021(b), F.C.)

Under these provisions, if a child is not taken into custody, the child must be released from temporary custody as soon as the fingerprints or photographs are obtained. (§58.0021(d), F.C.) If the fingerprints or photographs do not lead to a positive comparison or identification, law enforcement must immediately destroy them and make a reasonable effort to notify the child's parent, guardian or custodian of the action taken. (§58.0021(e), F.C.) A peace officer may obtain fingerprints or photographs from a child at a juvenile processing office or a location that affords reasonable privacy to the child. (§58.0021(f), F.C.) These laws permit law enforcement to thoroughly investigate cases without unnecessarily creating a juvenile record of the event.

A peace officer may also fingerprint and photograph a runaway child when it is deemed necessary to identify the person. Once the child is identified (or if the child cannot be identified), law enforcement must immediately destroy all copies of the fingerprint records or photographs of the child. (§58.0022, F.C.)

Juvenile fingerprints and photographs, however, are not available to the public. Only the judge and court staff, a court-ordered agency providing care for the child, a child's attorney, and certain governmental agencies may have access to juvenile fingerprints and photographs. Additionally, all information regarding a juvenile, including fingerprints and photographs, must be destroyed if the child is not referred to a juvenile court within ten days after the child is taken into custody. (§58.001(c), F.C.)

Law Enforcement Files and Juvenile Records

All law enforcement files and records concerning juveniles are also confidential and must be kept strictly separate from adult criminal files and records. (§58.007(c), F.C.) In 1995, the Legislature created the Juvenile Justice Information System, which is maintained by the Department of Public Safety (DPS). (§58.001, F.C.) This statewide database contains information about a juvenile's prior contacts with law enforcement so that law enforcement personnel can make informed decisions about how to properly handle a juvenile suspect. The database also helps police officials solve more crimes by providing a computerized means of comparing latent fingerprints. The Juvenile Justice Information System helps agencies compile statistics and other research data, which can be used to better combat juvenile crime in the future.

There is some information that may not be submitted to the Juvenile Justice Information System because of the destruction requirements in the Family Code. If a juvenile court or a prosecutor determines that no probable cause exists that a child engaged in illegal conduct, the court must order the destruction of the records relating to the conduct, including records contained in the Juvenile Justice Information System. (§58.006, F.C.)

Since 1999, “criminal information” relating to a child who is associated with a **combination** or a **criminal street gang**, may also be compiled and released, under certain circumstances, regardless of the child’s age. (Art. 61.04(a), C.C.P.) Criminal information includes “facts, material, photograph, or data reasonably related to the investigation or prosecution of criminal activity.” (Art. 61.01(3), C.C.P.) In an opinion under the Public Information Act, the Attorney General has ruled that information in the DPS gang database is confidential and is not subject to disclosure as public information.⁷

A **combination** means three or more persons who collaborate in carrying on criminal activities, although:

- participants may not know each other’s identity;
- membership in the combination may change from time to time; and
- participants may stand in a wholesaler-retailer or other arm’s-length relationship in illicit distribution operations. (§71.01(a), P.C.)

A **criminal street gang** means three or more persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate in the commission of criminal activities. (§71.01(d), P.C.)

Certain types of juvenile records, however, are not confidential. For example, municipal or justice court records of criminal cases involving juveniles are considered public record, as well as sex offender registration information. (§58.007(a)(2) and (3), F.C.) In a criminal trial, a prosecutor may introduce into evidence the adult defendant’s juvenile record at the punishment phase to seek an increase in punishment. (§58.007(g), F.C. and Art. 37.07, §3(a), C.C.P.) Additionally, a juvenile court may publicly disclose information about a juvenile who is the subject of a directive to apprehend or a warrant of arrest and who cannot be located by law enforcement. (§58.007(h), F.C.) A juvenile probation department may also release information contained in its records without permission of the juvenile court based on the guidelines adopted by the juvenile board. (§58.007(i), F.C.)

Communicating Information to Schools

Before 1993, the Family Code prohibited the disclosure of juvenile arrest information to the officials of the school where a child was enrolled. This prohibition hindered the ability of schools to take precautions to prevent future disruptions or violence. Now, the child’s school district superintendent and school principal must receive oral notification within 24 hours or on the next school day following a child’s arrest, referral to an office or official designated by the juvenile court, conviction,

or adjudication for any felony offense and for certain misdemeanor offenses. (Art. 15.27(a), (b) and (h), C.C.P.) The oral notice must be followed within seven days by written notification mailed to the superintendent or the superintendent's designee. (Art. 15.27(a), C.C.P.)

According to an Attorney General Opinion, Art. 15.27 of the Code of Criminal Procedure authorizes law enforcement officials to notify school authorities of all circumstances surrounding the arrest or detention of a juvenile.⁸ The notice may include any information that will help the school in taking the actions necessary to protect teachers and other students. The opinion specifically approves the release of information regarding the nature of the charges against a student and the identity of alleged victims, if they are students or personnel at the school.

Additionally, §37.015 of the Education Code protects school officials from civil liability if they, in good faith, alert law enforcement officials about certain criminal activities committed by juveniles at school. Under this provision, school officials are required to notify local law enforcement if they have reasonable grounds to believe that certain criminal activities are occurring in school, on school property, or at a school-sponsored or school-related activity, on or off campus. Since 2003, this now includes conduct that may constitute a criminal offense for which a student may be expelled from school. (§37.015(a)(7), E.C.) Instructional or support employees at the school, who have regular contact with a student whose conduct is the subject of the notice, must also be informed.

Since 1999, a school superintendent and a juvenile probation department may also enter into a written interagency agreement to share information about juvenile offenders. (§58.0051, F.C. and §37.084, E.C.) The information must relate to the juvenile system's ability to serve, prior to adjudication, the student whose records are being released. The juvenile justice agency that receives the educational information may not disclose it to a third party, other than to another juvenile justice agency, and must destroy all information when the child is no longer under the jurisdiction of a juvenile court.

Informal Disposition without Referral to Juvenile Court

An officer taking a juvenile into custody may dispose of that child's case informally without referring it to juvenile court if the case meets certain guidelines for such disposition that have been approved by the juvenile board. The officer must make a written report of the officer's disposition to the law enforcement agency, identifying the child and specifying the grounds for believing that taking the child into custody was authorized. (§52.03(a), F.C.)

In such cases, the officer may choose to refer the child to an agency other than the juvenile court, have a conference with the child and the child's parent or guardian, or provide a referral to a family services agency or a DFPS program for children in at-risk situations. (§52.03(c), F.C.) This type of disposition usually involves very minor cases and it is assumed that no further legal action will be taken.

Referral to a First Offender Program

An officer taking a child into custody may also refer the child to the law enforcement officer or agency that has been designated by the juvenile board to administer a first offender program. (§52.031, F.C.) First offender programs are for juveniles who have not been previously adjudicated

as having engaged in delinquent conduct. Since 1999, every juvenile board in Texas is required to adopt guidelines for informal disposition or first offender programs to encourage more law enforcement agencies to implement such programs. The adopted guidelines are not to be considered mandatory. (§52.032, F.C.)

Despite the name, a first offender program is not just for juveniles who have been taken into custody for the first time. A juvenile who has been referred to a first offender program previously, and who has then been released without being referred to juvenile court or adjudicated as having engaged in CINS, may again be referred to a first offender program. Typically, a juvenile board will establish a first offender program for certain cases involving CINS or delinquent conduct, other than felonies or misdemeanors involving violence or use or possession of weapons. (§52.031(a), F.C.)

An officer referring a juvenile to a first offender program must make a written referral to the agency, identifying the child and specifying the grounds for taking the child into custody. A child referred for disposition under a first offender program may not be detained in law enforcement custody. (§52.031(e), F.C.) The law also requires that a parent, guardian, or other custodian receive notice that a child has been referred for disposition under a first offender program. Both the child and the parent must consent to participation by the child in the first offender program. (§52.031(f) and (g), F.C.)

Participation in a first offender program may involve voluntary restitution to a victim; voluntary community service; vocational training, education, counseling or other rehabilitative services; and periodic reporting by the child to the designated agency. If the juvenile successfully completes the program, the case is closed and will not be referred to juvenile court. However, a juvenile will be referred to court if the child fails to complete the program, voluntarily terminates participation in the program before completion, or is taken into custody within 90 days of completing the program. (§52.031(j), F.C.) A law enforcement agency may keep a record of the child's successful completion of a first offender program beyond the 90 day destruction period, but only to determine the child's eligibility to participate in another such program. (§58.001(f), F.C.)

Referral to Juvenile Court

If an officer who has taken a child into custody decides to refer a case to the juvenile court, the officer must, without unnecessary delay and without first taking the child anywhere other than a juvenile processing office, do one of the following:

- release the child to a parent or other responsible adult with the adult's promise to bring the child to court;
- bring the child before the office or official designated by the juvenile board if there is probable cause to believe the child engaged in delinquent conduct, CINS or conduct that violates a condition of probation imposed by a juvenile court;
- bring the child to a detention facility designated by the juvenile board;
- bring the child to a secure detention facility;
- take the child to a medical facility if prompt treatment is required; or
- dispose of the case without referral to court. (§52.02(a), F.C.)

The Intake Process

When an officer decides to refer a case to juvenile court and the child is not released, the child must be taken to the detention facility designated by the juvenile board. An intake officer (or other person authorized by the board) will make a preliminary investigation to determine whether the person referred to juvenile court is a “child” within the meaning of the Family Code and whether there is probable cause to believe the person engaged in delinquent conduct or CINS, or is a **nonoffender** who has been taken into custody and is being held solely for deportation out of the United States. (§53.01(a), F.C.) A juvenile court judge or referee must also make a probable cause finding within 48 hours, including weekends and holidays, of the time the child was taken into custody. This finding may be made based on any reasonably reliable information provided to the court. (§54.01(o), F.C.)

A **nonoffender** is a child who is subject to the jurisdiction of a court under abuse, dependency, or neglect statutes for reasons other than legally prohibited conduct of the child or who has been taken into custody and is being held solely for deportation out of the United States. (§51.02(8), F.C.)

A child must be released unless detention is required by law. (§53.02, F.C.) An intake officer may decide to release a child on specific “conditions of release,” which must be reasonably related to insuring that the child will later appear in court. These conditions of release must be in writing and filed with the office or official designated by the court and a copy must be given to the child.

An intake officer is prohibited from releasing a child alleged to have used, possessed, or exhibited a firearm while engaging in delinquent conduct. (§53.02(f), F.C.) However, a juvenile court judge, referee, or magistrate may direct an intake officer to release such a child and the direction can be given orally by phone.

Deferred Prosecution: An Alternative to Formal Adjudication

If an intake officer, probation officer, or other person designated by the juvenile court determines that further proceedings against a juvenile are authorized, the officer may recommend **deferred prosecution**. (§53.03(a), F.C.) This option is generally reserved for juveniles who commit less serious offenses and who are not habitual offenders. Deferred prosecution is a voluntary alternative to adjudication and typically the child, parent, prosecuting attorney and the juvenile probation department all agree to certain probation conditions. As a general rule, a child may not be detained during or as a result of the deferred prosecution process. (§53.03(b), F.C.) If the child does not violate the conditions of this type of informal probation, which typically lasts up to six months, no juvenile record will be created.

“**Deferred prosecution** is an alternative to seeking a formal adjudication of delinquent conduct or conduct indicating a need for supervision. It is essentially a six month period of probation.” (Robert Dawson, *Texas Juvenile Law 5th Edition*, p. 57)

For example, if a juvenile commits the offense of graffiti under §28.08 of the Penal Code, the conditions of the deferred prosecution may include voluntary:

- attendance in a class that discusses self-responsibility and victim empathy; and
- restoration of the damaged property. (§53.03(h), F.C.)

Deferred prosecution may also involve counseling and referrals to other agencies for rehabilitation. Community service is a mandatory condition of all programs involving probation. The juvenile board may adopt a fee schedule for deferred prosecution services and if the parents of the child can afford to pay, the parent may be required to pay a fee of no more than \$15.00 per month for participation in the program. (§53.03(d), F.C.) If the child successfully completes deferred prosecution, he or she is discharged from probation and the case is closed. However, if the child violates the terms, the juvenile probation officer must report the violation to the juvenile court (§53.03(f), F.C.) and a prosecuting attorney may then take the original case to court.

In 2003, the legislature added a new provision that allows a juvenile court judge to place a child on deferred prosecution at any time before the jury is sworn, before the first witness is sworn in a trial before the court, or before the child pleads to the petition or agrees to a stipulation of evidence. (§53.03(i), F.C.) Such an order does not require the approval or consent of the prosecutor. The juvenile court may also grant a second period of deferred prosecution to a previous order of deferred prosecution, as long as the combined period does not exceed one year. A judge may not grant deferred prosecution for certain alcohol-related offenses. (§53.03(g) and (j), F.C.)

The Detention Hearing

If an intake officer does not release a juvenile from detention, or if release is not an option because a firearm was used or exhibited during the commission of the offense, the Family Code requires that a request for a detention hearing be made and presented to the juvenile court. A detention hearing without a jury must be held “promptly,” but not later than the second working day after the child is taken into custody. (§54.01(a), F.C.) If a child is taken into custody on a Friday or Saturday, the detention hearing must be held on the first working day after the child was taken into custody. If the child is detained on a firearm-related offense, the detention hearing must be held within 24 hours (excluding weekends and holidays) after the child was taken into custody. (§54.01(p), F.C.)

A **guardian ad litem** acts as the legal representative for the child who is the subject of a law suit. The **guardian ad litem** may be a qualified non-lawyer, such as a volunteer advocate, or a lawyer who serves in a dual role as attorney for the child and guardian ad litem. (Chap. 107, F.C.)

Detention hearings are very informal and a child may be, but does not have to be, represented by a lawyer. Reasonable notice of the detention hearing, either oral or written, must be given to the child and, if they can be located, to the parents, guardian or custodian. (§54.01(b), F.C.) A detention hearing may be held without the child’s parents if the court has not been able to locate them. If no parent or guardian is present, the court must appoint a lawyer or a **guardian ad litem** for the child. (§54.01(d), F.C.)

Criteria for Detaining a Juvenile

After a detention hearing is held, a child must be released unless the judge finds that the child:

- is likely to abscond;
- lacks adequate supervision;
- lacks a parent or other person to return him or her to court when required;
- is a danger to himself or may threaten the public safety; or
- was previously adjudicated for delinquent conduct and is likely to commit an offense if released. (§54.01(e), F.C.)

Release of a juvenile may be conditioned on requirements reasonably necessary to insure the child's appearance at later court proceedings. Conditions of release must be in writing and a copy must be furnished to the child. (§54.01(f), F.C.) If the child is released to an adult, the release must be conditioned on an agreement that the adult will ensure the appearance of the child at a later court proceeding or be subject to an order of contempt. (§53.02(d), F.C.)

A new provision in the Family Code authorizes the juvenile court, referee or magistrate to order a child's parent, who is present at the detention hearing, to perform certain acts or omissions specified by the judge that will assist the child in complying with the conditions of release. Such an order must be in writing and a copy furnished to the parent or guardian. The order is enforceable by contempt of court. (§54.01(r), F.C.)

An initial detention order extends to the end of the court case, if there is one, but in no event for more than ten working days. The initial detention hearing cannot be waived, although subsequent detention hearings may be waived if the child and the child's attorney agree. If a county does not have a certified detention facility, any subsequent detention orders may extend for up to 15 working days. (§54.01(h), F.C.) The reason for holding a detention hearing every ten (or 15) days is for the juvenile court to determine whether there are sufficient grounds for continued detention of the child.

Detention Hearings for Status Offenders and Nonoffenders

The detention hearing for a **status offender** or for a nonoffender who has not been released must be held before the 24th hour after the time the child arrived at a detention facility, excluding hours of a weekend or a holiday. (§54.011(a), F.C.; *see also*, §53.01(a)(2)(B), F.C.) In most cases, the judge or referee must release the status offender or nonoffender from secure detention.

A **status offender** means a child who is accused, adjudicated, or convicted for conduct that would not be a crime if committed by an adult. (§51.02(15), F.C.)

A new Family Code provision makes it clear that a nonoffender, including a person who has been taken into custody and is being held solely for deportation out of the United States, may not be detained for any period of time in a secure detention or correctional facility, regardless of whether the facility is publicly or privately operated. (§54.011(f), F.C.) This type of detention is now considered illegal and it is a Class B misdemeanor

to knowingly detain or assist in detaining a nonoffender in a secure detention or correctional facility. A nonoffender who is detained in this manner is entitled to immediate release from the facility and may bring a civil action for compensation against any person responsible for the illegal detention.

Right to Legal Counsel

Before the first detention hearing, the court must notify the child and his or her parents of the child's right to legal counsel. (§§54.01(b) and 51.10(a)(1), F.C.) Because of the two-day deadline for holding the initial detention hearing, the first hearing may be held without providing legal counsel to the child. However, if the court decides to detain the child and the child was not represented by an attorney, the court must appoint an attorney. (§51.01(c), F.C.) The appointed attorney may request a new detention hearing, which must take place within two working days of the request. (§54.01(n), F.C.) The juvenile's attorney must then be present at all subsequent detention hearings, unless the hearings are waived by the child and the child's attorney. (*See*, §51.09, F.C.)

Since 2003, the juvenile board of a county may make available to the public the list of attorneys eligible for appointment to represent children in juvenile proceedings. (51.10(j), F.C.) This new provision is designed to assist parents in retaining a lawyer to represent their child. The juvenile court may also order the parent to reimburse the county for payments made to a court-appointed attorney. The order may require full or partial reimbursement to the county. The court may not order payments that exceed the parent's financial ability to meet the payment schedule ordered by the court. (51.10(k) and (l), F.C.)

If an attorney is appointed at the initial detention hearing and the child is detained, the attorney must continue to represent the child until the case is completed, the family retains an attorney, or a new attorney is appointed by the juvenile court. Release of the child from detention does not terminate the attorney's representation. (§51.101(a), F.C.) The same rules apply for an attorney who is appointed to represent a child after the child has been detained, if the initial detention hearing was held without an attorney. (§51.101(b), F.C.) If an indigent child is not detained and counsel was not appointed at the initial detention hearing, then a juvenile court must appoint an attorney to represent the child on or before the fifth working day after the date the petition was served on the child. (§51.101(d), F.C.)

A child also has the right to be represented by counsel at other stages of the juvenile court process, including pre-trial, adjudication, disposition and modification of disposition hearings, as well as Chapter 55 hearings pertaining to children with mental illness or mental retardation, transfer to adult criminal court or release proceedings, and appeals. (§51.10(a), F.C.)

Charging and Trying a Child in Juvenile Court

An intake officer, probation officer or other officer who has been authorized by the juvenile court may recommend that the prosecuting attorney proceed with a **petition** in juvenile court. The petition may charge a child with one of two forms of illegal conduct: delinquent conduct or CINS, both of which are discussed in greater detail on pages 27-28. As previously noted, the final decision about whether or not to file a petition in juvenile court rests exclusively with the prosecuting attorney. (§§53.012 and 53.04, F.C.)

A **petition** must state:

- with reasonable particularity the time, place and manner of the acts alleged and the penal law or standard of conduct allegedly violated by the acts;
- the name, age and residence address, if known, of the child who is the subject of the petition;
- the names and residence addresses, if known, of the parent, guardian or custodian of the child and of the child's spouse, if any;
- the name and residence address of any known adult relative residing in the county or nearest to the location of the court if the child's parent, guardian or custodian does not reside or cannot be found in the state; and
- the previous adjudications in which the child was found to have engaged in conduct violating penal laws of the grade of felony, if the child is alleged to have engaged in **habitual felony conduct**. (§53.04(d), F.C.)

(See p. 29 for the definition of **habitual felony conduct**)

Filing Charges Against a Child

The prosecuting attorney may file a petition with the juvenile court only if there are sufficient legal grounds to do so; otherwise, no petition is filed and the case is either dismissed or returned to the juvenile probation department for further proceedings. (§53.012(b), F.C.) The prosecuting attorney may also decide not to file a petition because the case is not serious enough to warrant prosecution and may instead recommend that the juvenile participate in deferred prosecution. Only about one-third of the juveniles who are referred to juvenile court are formally charged with and prosecuted for an offense.⁹

If charges are filed against a juvenile, a probation officer must conduct a court investigation of the child. The investigation report contains a detailed assessment of the child's behavior, home and school life, and social relationships. The report assists the judge in later deciding how to appropriately sentence the offender. (§54.04(b), F.C.)

The terminology in a juvenile case is different than in an adult criminal case. The terms "adjudication hearing" and "disposition hearing" in the juvenile system refer to what are called "trial" and "sentencing" in adult criminal proceedings. The law requires that the adjudication hearing and the disposition hearing be held separately. A child also has a right to a trial by jury at the adjudication hearing. (§54.03(b)(6), F.C.)

Service of a Summons

The **summons** is a family's official notice that charges have been filed against a child and that the case is going to juvenile court. Once the prosecuting attorney files a petition charging the child with an offense, the juvenile court orders that the family be notified of the charges by delivering a petition with the summons attached. (§53.06(b), F.C.)

The summons states the date on which the child and his or her parents must appear in court to answer the charges in the petition. (§53.06(b), F.C) It generally advises the child's parents that the child will need an attorney and that one will be provided by the court if the family cannot afford to hire counsel. The summons may additionally warn the parents that they may be responsible for any property damage that their child has caused and that they may have to participate in counseling.

If a petition is filed, the juvenile court will order the issuance of a **summons** to:

- the child named in the petition;
- the child's parent, guardian or custodian;
- the child's guardian ad litem; and
- any other person who appears to the court to be a proper or necessary party to the proceeding.

The **summons** must require the persons served to appear before the court at the time set to answer the allegations in the petition. A copy of the petition must accompany the **summons**. (§53.06(a) and (b), F.C.)

Pre-trial and Adjudication Hearings

At a pre-trial hearing, the judge reviews with the family the allegations against the child. The probation officer will discuss the major problem areas concerning the child and make recommendations to address them, and the court will set a date for an adjudication hearing. (§53.05, F.C.) A juvenile's attorney may also file **pre-trial motions** to suppress certain evidence or to contest or dispute the arrest of the juvenile. Such motions may also be heard by a juvenile court judge or referee during a pre-trial hearing.

Pre-trial motions are legal pleadings filed by either side in a law suit that are heard by the court before trial. Common pre-trial motions in juvenile cases include exceptions to the form or substance of the petition, motions for continuance, motions to suppress evidence, or motions for discovery. (See, Art. 28.01, C.C.P.)

The adjudication hearing is the juvenile court equivalent of a criminal trial in district court. Juvenile court hearings are open to the public, unless the court determines there is good cause to exclude the public. (§54.08(a), F.C.) However, if a child is under age 14 at the time of the hearing, the hearing must be closed to the public unless the court finds that the interests of the child or the public would be better served by opening the hearing to the public. (§54.08(c), F.C.)

At the adjudication hearing, the judge will again explain to the child and his or her parents what the allegations are, the consequences of the proceedings, and the child's legal rights. These rights include the privilege against self-incrimination (the right to refuse to answer questions or give testimony against oneself), the right to question witnesses, the right to an attorney, and the right to a trial by jury. (§54.03(b), F.C.)

An adjudication hearing must be before a jury unless the child waives, or gives up, that right. (§54.03(c), F.C.) Any waiver of a child's rights must be voluntary, in writing or in open court, and with the approval of the child's attorney. (§51.09, F.C.) Unlike most other states, Texas allows juveniles the option of jury trial.

An adjudication hearing, like an adult trial, is a hearing to determine guilt or innocence. The judge or jury must decide whether the child committed a delinquent act or CINS offense. The Rules of Evidence applicable to adult criminal cases and Chapter 38 of the Code of Criminal Procedure

(dealing with evidence in criminal actions) apply to the proceedings in juvenile court. (§54.03(d), F.C.) If the State does not prove beyond a **reasonable doubt** that the child has engaged in the alleged conduct, the court must dismiss the case. If the judge or jury (by a unanimous verdict) finds that the child engaged in delinquent conduct or CINS, the court will set a date for a disposition hearing.

An order of adjudication or disposition in juvenile court is not a criminal conviction and does not impose any of the civil disabilities that an adult criminal conviction would impose. However, an adjudication for a felony offense committed after January 1, 1996, that resulted in a commitment to TYC is a final felony conviction for purposes of enhancement in adult criminal court. (§§51.13(d), F.C. and 12.42, P.C.)

A **reasonable doubt** is a doubt based on reason and common sense after a careful and impartial consideration of all the evidence in the case. It is the kind of doubt that would make a reasonable person hesitate to act in the most important of his or her own affairs.

Geesa v. State, 820 S.W.2d 154, 162 (Tex.Crim.App. 1991), overruled by *Paulson v. State*, 28 S.W.3d 570 (Tex.Crim.App. 2000)

Disposition or Sentencing

A separate hearing is held for the disposition, or sentencing, phase of a juvenile trial. (§54.04(a), F.C.) A disposition incorporates both punishment and rehabilitation of a juvenile offender. It is intended to protect the public while providing training, treatment and rehabilitation that emphasizes the accountability and responsibility of both the child and the child's parents for the juvenile's conduct. (§51.01, F.C.)

There is no right to a jury in a disposition hearing, except in determinate sentencing cases. (See, page 28 for a detailed discussion of *Determinate Sentencing of Violent or Habitual Offenders*) At the disposition hearing, the court may consider reports from probation officers and others who can provide information regarding the child's conduct and background. (§54.04(b), F.C.) No disposition may be made unless the child is in need of rehabilitation or the protection of the public, or the child requires that disposition be made. (§54.04(c), F.C.)

Disposition of CINS and Delinquent Conduct

If the juvenile court judge or a jury finds that a child committed a CINS violation, the court's disposition may involve placing the child on varying levels of probation. The conditions of the child's probation can be based "on such reasonable and lawful terms as the court may determine," including probation at home or with relatives, a suitable foster home, or a suitable public or private institution or agency. (§54.04(d), F.C.) Under no circumstances may a CINS offender be committed to TYC for engaging in conduct that would not be considered a crime if committed by an adult. (§54.04(o), F.C.)

If the judge or jury finds that the child engaged in delinquent conduct, the court's disposition may order the child to be placed on varying levels of probation or to be committed to TYC. Among other requirements, the terms of probation may include intensive supervision or electronic monitoring programs. Except under determinate sentencing, a youth who has been committed to TYC will

receive an “indeterminate” sentence, which allows TYC to release the child at any time before he or she turns 21. A juvenile court sentence may extend past an offender’s 21st birthday if the grand jury has previously approved a petition for determinate sentencing. (§53.045, F.C.)

A juvenile may be sent to TYC for committing a Class A or Class B misdemeanor offense, but only if the offender has previously been adjudicated for committing a felony offense. (§54.04(t), F.C.) An adjudication for contempt of a county, justice, municipal or juvenile court, however, does not qualify as a misdemeanor adjudication for which a juvenile can be committed to TYC. (§54.04(u), F.C.)

Progressive Sanctions Model

In 2003, the legislature renamed Chapter 59 of the Family Code from *Progressive Sanctions Guidelines* to *Progressive Sanction Model*. This change reflects the legislative thinking that departures from the model by juvenile court judges are not necessarily undesirable and in many cases may be very beneficial to the disposition of a juvenile’s case. “This name change enforces the concept that the recommendations are a ‘model’ and are not strict guidelines.”¹⁰

The purposes of the Progressive Sanctions Model are to:

- ensure that juvenile offenders face uniform and consistent consequences and punishments;
- balance public protection and rehabilitation while holding juvenile offenders accountable;
- permit flexibility in the decisions relating to the juvenile;
- consider the offender’s circumstances
- recognize that departure of a disposition from this model is not necessarily undesirable and in some cases is highly desirable ; and
- improve juvenile justice planning and resource allocation. (§59.001, F.C.)

The Progressive Sanctions Model consists of seven sanction levels, beginning with a mere caution to refrain from future CINS or delinquent conduct and ending with determinate sentencing and discretionary certification to adult court. (§§59.004-59.010, F.C.) (See page 30 for a detailed discussion of *Certification of a Juvenile as an Adult*) In 2003, the legislature repealed subsection (e) of §59.003, which had required a written statement to be submitted to TJPC whenever a juvenile court or probation department deviated from the guidelines.

Disposition of Sexual Offenses

If a child is adjudicated for committing a sexual offense, the youth may be required to register as a sex offender under Chapter 62 of the Code of Criminal Procedure. In 2001, the legislature amended Chapter 62 to give judges greater discretion regarding sex offender registration for juveniles. Previously, juveniles were legally required to register if they were adjudicated for certain sex-related offenses. Since 2001, however, a juvenile court may now enter an order, during or after disposition of a case, excusing compliance with the registration requirements after conducting a hearing to determine whether the interests of the public require sex offender registration. The hearing may be held regardless of whether the person is under 18. (Art. 62.13(a) and (b), C.C.P.) Art. 62.13 is fully retroactive, meaning that it applies to cases decided before September 1, 2001.

After a hearing, the juvenile court judge must enter an order excusing compliance with the registration requirements if the court determines that:

- the protection of the public would not be increased by registration; or
- any potential increase in protection of the public resulting from registration is clearly outweighed by the anticipated substantial harm to the child and the child's family that would result from registration. (Art. 62.13(e), C.C.P.)

Another option for the juvenile court is to enter an order, again after conducting a hearing or under a plea agreement, deferring the decision on registration until the child has completed treatment for the child's sexual offense as a condition of probation or while committed to TYC. The court retains discretion to require or excuse registration at any time during the treatment or on its successful or unsuccessful completion. During the period of deferral, registration may not be required. Following successful completion of treatment, registration is excused unless a hearing is held on motion of the state and the court determines the interests of the public require registration. Not later than the 10th day after the date of the child's successful completion of treatment, the treatment provider must notify the juvenile court and prosecuting attorney of the completion.(Art. 62.13(j), C.C.P.)

A third option, also after a hearing or under a plea agreement, is for the juvenile court to enter an order requiring the child to register as a sex offender, but to provide that the registration information is not public information and is restricted to use by law enforcement and criminal justice agencies and public or private institutions of higher education. Information obtained in this manner may not be posted on the Internet or released to the public. (Art. 62.13(k), C.C.P.) Finally, a juvenile court judge still has the authority to require full registration, including publication of the juvenile's name and photograph on the Internet, although information about a juvenile registrant may not be published in a newspaper. (Art. 62.031, C.C.P.)

A new provision in Chapter 62 requires DPS and local law enforcement authorities to remove all information about a person from the sex offender registry when that person is no longer required to register. (Art. 62.14, C.C.P.) The duty to remove such information arises only if DPS has received notice from a local law enforcement authority, a juvenile court, or the person (or his or her representative) that the duty to register has expired. (Art. 62.14(b), C.C.P.) After DPS has removed information from the registry, the department must notify all local law enforcement authorities that have provided registration information about the person who is subject to removal. Upon receiving such notice, the local law enforcement authority must then remove all registration information about the person from its registry. (Art. 62.14(e), C.C.P.) DPS must also notify all public and private agencies or organizations to which it has provided registration information, and these agencies or organizations must then also remove all registration information that it maintains and is accessible to the public with or without charge. (Art. 62.14(f), C.C.P.)

What Happens After a Disposition Hearing?

At the conclusion of a disposition hearing, the court must place the juvenile on probation if the adjudication was for CINS, or choose between probation and commitment to TYC if the child was adjudicated for delinquent conduct. (§54.04, F.C.) The court may also apply other dispositional alternatives in addition to probation or commitment.

Court decisions involving juveniles may be appealed. An appeal from a juvenile court goes to a court of appeals and may be carried to the Texas Supreme Court as in civil cases generally. (§56.01(a), F.C.) An appeal by a juvenile who has been tried as an adult in a criminal district court is ultimately made to the Texas Court of Criminal Appeals. A child’s right to appeal does not limit his or her right to obtain a **writ of habeas corpus**. (§56.01(o), F.C.) A child may not appeal a departure from the sanction level assignment model provided by Chapter 59 of the Family Code. (§59.014(3), F.C.)

What Happens When a Child is Placed on Probation?

A juvenile court judge may place a child on probation at home, the home of a relative or other suitable person, a foster home, or a public or private youth facility other than TYC. (§54.04(d)(1), F.C.) A juvenile may

be removed from the family home if the child cannot be provided the quality of care and level of support and supervision that is needed to successfully complete probation. (§54.04(c), F.C.) If a child is placed on probation, the terms of probation must be in writing and a copy of the court’s order must be furnished to the child. (§54.04(f), F.C.)

“The **writ of habeas corpus** is the remedy to be used when any person is restrained in his liberty. It is an order issued by a court or judge of competent jurisdiction, directed to any one having a person in his custody, or under his restraint, commanding him to produce such person, at a time and place named in the writ, and show why he is held in custody or under restraint.” (Art. 11.01, C.C.P.)

Under court-ordered probation, a child can be required to attend school, abide by curfews, attend counseling, participate in specified programs, and make restitution. (Ch. 59, F.C.) Community service is a mandatory condition of probation, subject only to limited exceptions. (§54.044(a), F.C.) A juvenile may be placed on probation for any term, but in most cases not past his or her 18th birthday. (§54.04(l), F.C.)

The court must order DPS to suspend a juvenile’s driver’s license or permit, or deny the issuance of a license or permit, if the juvenile is adjudicated for certain intoxication or controlled substance violations. (§54.042(a), F.C.) The court may also order DPS to suspend or deny a child’s license if the juvenile is adjudicated for a graffiti offense or any CINS or delinquent conduct offense for a period not to exceed 12 months. The order must specify a period of suspension or denial not to exceed 365 days. (§54.042(b)-(d) and (f), F.C.)

A probation officer is assigned to each juvenile probationer. The probation officer meets with the child on a regular basis to provide supervision and guidance. The probation officer also monitors the child’s school attendance and reports to the court if the child is voluntarily absent from school.

If a child breaks any of the probation terms, he or she may be returned to juvenile court for a hearing to modify or revoke the probation. Parents may be expected to participate in their child’s probation program—possibly through family counseling, parenting classes, making restitution, or paying all or part of the reasonable costs of treatment programs in which the child is required to participate while on probation. (§54.041, F.C.) In some cases, parents may even be ordered to perform community service with their child. (§54.044(b), F.C.)

If a juvenile court places a child on probation in a determinate sentencing case and transfers supervision on the child's 18th birthday to an adult district court for placement on **community supervision**, the district court must require the payment of any unpaid restitution as a condition of the community supervision. This extends the child's, but not the parent's, responsibility to make restitution after the case is transferred to district court for community supervision. (§54.041(h), F.C.)

Community supervision is essentially adult probation. It means "the placement of a defendant by a court under a continuum of programs and sanctions, with conditions imposed by the court for a specified period..." (Art. 42.12, §2(2), C.C.P.)

III. Offenses tried by a Juvenile Court

There are two types of juvenile misconduct that place a child under the jurisdiction of the juvenile court: CINS and delinquent conduct. CINS cases involve the least serious criminal offenses, other than traffic offenses, and also certain non-criminal conduct, commonly referred to as **status offenses**.

A **status offense** occurs when a juvenile is charged with engaging in conduct that would not be prohibited for an adult. Examples include: truancy, running away and certain alcohol and tobacco violations. A **status offender** may not be committed to TYC for engaging in conduct that would not be a crime if committed by an adult. (§54.04(o)(1), F.C.)

There are seven types of CINS offenses listed in the Family Code:

- any fineable offense;
- public intoxication;
- truancy;
- running away;
- inhalant abuse;
- expulsion for violation of a district's student code of conduct; or
- violation of a reasonable and lawful "child at risk" court order. (§51.03(b), F.C.)

If a juvenile court finds that a child has committed a CINS violation, it may place the youth on varying levels of probation, but it cannot sentence the offender to TYC. (§54.04(o)(1), F.C.)

Delinquent Conduct

Delinquent conduct involves more serious violations than CINS, other than traffic offenses, including the following illegal conduct by a juvenile:

- commission of any felony offense or jailable misdemeanor;
- violation of a lawful court order under circumstances that would constitute contempt of that court in:
 - ▶ a justice or municipal court; or
 - ▶ a county court for conduct punishable by fine only;

- commission of driving, flying or boating while intoxicated, intoxication assault or intoxication manslaughter; or
- a third (or subsequent) offense of driving under the influence of alcohol, which requires only a detectable amount of alcohol in a minor's system. (§51.03(a), F.C.)

If a court finds that a child has engaged in delinquent conduct, it may place the child on varying levels of probation depending on the seriousness of the offense, or commit the offender to TYC. (§54.04, F.C.) In the most serious felony cases, the juvenile court may also have the options of determinate sentencing or discretionary transfer to adult criminal court. (§§53.045 and 54.02, F.C.)

Determinate Sentencing of Violent or Habitual Offenders

In most cases, the juvenile justice system can only exercise control over an adjudicated offender for a limited time. For example, if a child is placed on probation, the probation must end on or before the offender's 18th birthday. Similarly, if a juvenile is committed to TYC, that sentence must be completed on or before the offender's 21st birthday.

Determinate sentencing, however, may result in a juvenile offender serving time beyond his or her 21st birthday, depending on the charged offense. (§54.04(d)(3), F.C.) For example, a capital felony, a first degree felony, or an aggravated controlled substance felony may result in a term of not more than 40 years. A second degree felony may result in a maximum term of 20 years, while a third degree felony carries up to 10 years.

If the prosecuting attorney wants to file a determinate sentencing petition, the juvenile court must be informed at the time the charges are filed. The prosecutor must also seek **grand jury** approval of the petition. (§53.045(b), F.C.) The approved petition for determinate sentencing is the equivalent of a grand jury indictment in adult criminal court. If the grand jury approves the petition, it certifies the fact of its approval to the juvenile court. (§53.045(d), F.C.)

A **grand jury** is a body of 12 citizens organized to inquire into the commission of crimes and to decide whether probable cause exists to indict an alleged criminal offender. (See, Ch. 19, C.C.P.)

Since 1999, a judge or jury may assess probation as an alternative to TYC, if the sentence does not exceed ten years. (§54.04(q), F.C.) If the probation term extends beyond the offender's 18th birthday, the juvenile court must discharge the probation or transfer supervision to the Community Supervision and Corrections Department (CSCD) of the appropriate adult criminal court. (§54.051, F.C.) If, after a hearing, the juvenile court decides to transfer the child, the court must transfer the child to an appropriate district court on the child's 18th birthday. (§54.051(d), F.C.) A new provision makes it clear that when a juvenile court transfers probation to an adult criminal court, certain restrictions and minimum probation terms of adult law do not apply to the transferred offender. If the criminal court judge revokes the offender's community supervision, the judge may reduce the prison sentence to any length without regard to the minimum term imposed on adult defendants. (§54.051(e-1) and (e-2), F.C.)

After serving a minimum length of stay at TYC, the offender may be retained in the juvenile system or transferred to an adult prison facility to complete the sentence. The goal is to give serious juvenile offenders an opportunity to be rehabilitated within the juvenile justice system. However, if all efforts at rehabilitation fail, the public will be protected by requiring the offender to complete his or her sentence in the adult prison or parole system.

The Family Code currently contains a list of criminal offenses, including **habitual felony conduct**, for which a juvenile may receive a determinate sentence. (§53.045(a), F.C.)

The offenses include:

- Murder (§19.02, P.C.);
- Capital Murder (§19.03, P.C.);
- Manslaughter (§19.04, P.C.);
- Aggravated Kidnapping (§20.04, P.C.);
- Sexual Assault (§22.011, P.C.) or Aggravated Sexual Assault (§22.021, P.C.);
- Aggravated Assault (§22.02, P.C.);
- Aggravated Robbery (§29.03, P.C.);
- Injury to a Child, Elderly or Disabled Individual (§22.04, P.C.) (if the offense is punishable as a felony, other than a state jail felony);
- Felony Deadly Conduct (§22.05(b), P.C.) (by discharging a firearm);
- First Degree or Aggravated Controlled Substances Felony (Ch. 481, Health and Safety Code);
- Criminal Solicitation (§15.03, P.C.);
- Indecency with a Child (§21.11(a)(1), P.C.);
- Criminal Solicitation of a Minor (§15.031, P.C.);
- Criminal Attempt (§15.01, P.C.) (if the offense attempted was murder, capital murder, or an offense listed under §3g(a)(1), Art. 42.12, C.C.P.);
- Arson (§28.02, P.C.) (if bodily injury or death occurs); or
- Intoxication Manslaughter (§49.08, P.C.).

Habitual felony conduct involves a felony, other than a state jail felony, committed by a juvenile who has at least two previous felony adjudications. The second previous adjudication must be for conduct that occurred **after** the date the first previous adjudication became final. (§51.031, F.C.) An adjudication is final if the child is placed on probation or is committed to TYC.

In 2001, the offenses of manslaughter and intoxication manslaughter, both second degree felonies, were added to the list of covered offenses.

Certification of a Juvenile as an Adult

Criminal courts that handle adult cases generally may not prosecute and convict a juvenile who commits an offense before turning 17. The Family Code, however, provides that the juvenile court may waive, or give up, its exclusive original jurisdiction and transfer a child to stand trial in an adult criminal district court. (§54.02, F.C.) This process is sometimes referred to as a certification or transfer hearing. Certification hearings in Texas are rare and typically involve only the most serious types of felony offenses.

Under current law, the juvenile court may waive its jurisdiction and transfer a juvenile who is 14 years of age or older at the time of the offense, if there is probable cause to believe the offender committed a capital felony, an aggravated controlled substance felony, or a first degree felony. The juvenile court may also certify and transfer a juvenile who is 15 or older at the time of the offense, if there is probable cause to believe the offender committed a second or third degree felony or a state jail felony. (§54.02(a)(2), F.C.)

Texas law also provides for the certification of a person 18 years of age or older, who is alleged to have committed murder or capital murder as a juvenile between the ages of ten and 17. Similarly, a person 18 or older, who is alleged to have committed an eligible felony offense between the ages of 14 and 17, may also be transferred to adult criminal court. (§54.02(j)(2), F.C.) Once a juvenile is certified to be tried as an adult, all subsequent felonies committed by the certified youth, regardless of the offender's age, must also be prosecuted in adult criminal court rather than juvenile court. (§54.02(m), F.C.)

A juvenile offender is treated as an adult from the moment the juvenile court judge signs the certification and transfer order. Upon conviction in the criminal district court, a judge or jury may impose the same punishment, excluding the death penalty, as can be imposed on any adult defendant for commission of the same offense.

A prosecuting attorney seeks certification by filing a petition with the juvenile court to transfer the case to criminal district court. The juvenile court then holds a transfer hearing, without a jury, to decide whether to approve the transfer. (§54.02(c), F.C.) Before the hearing, the juvenile court must order and obtain a complete diagnostic study, social evaluation and full investigation of the child, the child's circumstances and the circumstances of the offense. (§54.02(d), F.C.)

There are a number of factors the juvenile court must consider before deciding whether to certify a juvenile for trial in the adult criminal system. For instance, the court must consider whether the offense was against a person or against property. (§54.02(f)(1), F.C.) The law favors certification when the offense is against a person.

The juvenile court must also consider the following factors:

- the sophistication and maturity of the child;
 - the previous record of the child;
 - the continuing danger the child poses to the public; and
 - the likelihood of the child's rehabilitation with the resources available to the juvenile court.
- (§54.02(f)(2)-(4), F.C.)

When considering certification, the juvenile court must first determine that there was probable cause to believe the youth committed the offense. In addition, it must determine whether, because of the nature of the offense or because of the youth's background, the safety and protection of the community require that the child be tried as an adult. (§54.02(a)(3), F.C.)

If the juvenile court transfers the case to the adult criminal court, the prosecuting attorney must still seek an indictment against the offender from a grand jury. If the grand jury does not return an indictment, the case must be dismissed and the case may not be remanded, or returned, to the juvenile court. (§54.02(i), F.C.)

IV. Parental Rights and Responsibilities

In 2003, the legislature introduced Chapter 61 into the Family Code, titled *Rights and Responsibilities of Parents and Other Eligible Persons*. This new chapter recognizes that parents, guardians and custodians must be involved in the rehabilitation of their children after they have been placed on juvenile probation. “This chapter is designed to bring parents more into the juvenile process to assist in rehabilitating their children.”¹¹

Chapter 61 is divided into three parts:

- Subchapter A:** Entry of Orders Against Parents and Other Eligible Persons;
- Subchapter B:** Enforcement of Order Against Parent or Other Eligible Person; and
- Subchapter C:** Rights of Parents.

Entry of Orders Against Parents

Subchapter A describes 14 instances in which a juvenile court may order a parent or other eligible person to do, or in some cases, to not do certain acts. Specifically, a juvenile court may order a parent or guardian to:

- pay probation fees;
- make restitution;
- pay graffiti eradication fees;
- perform community service;
- pay court costs;
- refrain from doing any act injurious to the welfare of the child;
- prevent contact between the person and the child;
- participate in counseling if the person lives in the same household with the child;
- participate in an available program addressing truancy;
- pay reasonable attorney’s fees for representing the child;
- reimburse the county for payments made to a court-appointed attorney for the child;
- pay deferred prosecution supervision fees;
- attend a court hearing; and
- act (or refrain from acting) to aid the child in complying with conditions of release from detention. (§61.002(a), F.C.)

A 15th subdivision gives juvenile court judges the flexibility to enter orders against a parent or guardian that are not specifically included in the above list or that may be enacted by the Legislature in the future. Child support orders are specifically excluded since Title 5 of the Family Code contains provisions dealing directly with that issue. (§61.002(b), F.C.)

“No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the **due course of the law** of the land. (Texas Const. Art. 1, § 19)

Before a juvenile court judge can enter an order against a parent or guardian, there are certain requirements of **due process of law** that must be satisfied. For example, the juvenile court must provide a parent or guardian with:

- sufficient notice, in writing or orally in a recorded court hearing, of a proposed order; and
- sufficient opportunity to be heard on the matter. (§61.003(a), F.C.)

A juvenile court’s order must be in writing and a copy must be “promptly furnished” to the parent. (§61.003(b), F.C.) The parent may also be required to provide suitable identification to be included in the court’s file, such as a driver’s license number, a social security number or even fingerprints. (§61.003(c), F.C.) The identification can later be used to help locate the parent in the event that enforcement proceedings become necessary.

Either the parent or the state, as in other civil cases, can appeal a juvenile court order entered against a parent. Such an appeal will not abate or otherwise affect the proceeding in the juvenile court involving the child. (§61.004, F.C.)

Enforcement of Order Against Parent

Subchapter B of Chapter 61 deals with the enforcement of the order that has been entered against the parent or other eligible person. If a parent fails to obey an order of the juvenile court, a written motion for enforcement may be filed which must:

- identify the violation;
- specify how the parent failed to comply with the order;
- state the relief requested; and
- contain the signature of the party filing the motion.

All alleged violations must be contained in the same motion and the juvenile court judge may enter a contempt order against the parent if the motion is filed not later than six months after the child’s 18th birthday. (§61.051, F.C.)

A parent must receive written notice of the date, time and place of the hearing and must personally appear in court to respond to the motion to enforce. If a parent fails to appear in court, a juvenile court judge may issue a **capias** for the arrest of the person. (§61.052, F.C.) A parent is entitled to representation at a hearing to enforce the juvenile court’s order and a lawyer must be appointed to represent a parent who is indigent. (§61.053, F.C.)

“A ‘**capias**’ is a writ issued by the court or clerk, and directed ‘To any peace officer of the State of Texas,’ commanding him to arrest a person accused of an offense and bring him before the court immediately, or on a day or at a term stated in the writ.” Art. 23.01, C.C.P.

Before finding a parent in contempt, the juvenile court judge must find beyond a reasonable doubt that a violation has occurred as alleged in the motion for enforcement. The contempt hearing is conducted without a jury and a parent is not required to testify. (§61.055(b)–(d), F.C.)

It is an **affirmative defense** to enforcement of the order that the juvenile court judge did not provide the parent with due process of law during the proceeding in which the court entered its original order. (§61.055(g), F.C.) There is also an affirmative defense for inability to pay restitution, court costs, supervision fees, or any other payment ordered by the court if a parent was financially unable to pay. In order to convince the court of one’s inability to pay, the person must show that he or she could not have reasonably paid the court-ordered obligation after discharging other important financial obligations, such as payments for housing, food, utilities, necessary clothing, education, and preexisting debts. (§61.056, F.C.)

An **affirmative defense** is a defense that an accused must prove in court by a preponderance of evidence, meaning the general standard of proof in civil cases. (See, §2.04(d), P.C.)

If a juvenile court judge finds a parent in contempt, the court may commit the person to the county jail for up to six months or impose a fine not to exceed \$500, or both. (§61.057(a), F.C.) Instead of ordering a parent to serve jail time, a juvenile court judge may enter an order requiring the person’s future compliance with the court’s previous orders. A juvenile probation officer may be assigned to assist the parent in complying with the new order. This court order is also enforceable and may form the basis of a new enforcement proceeding. (§61.057(c)–(e), F.C.) A juvenile court judge also has the discretion to reduce any jail time or fine, or to reduce the burden of complying with any court order, at any time before the obligation is fully satisfied. (§61.057(f) and (g), F.C.)

Rights of Parents

While Subchapters A and B focus on parental responsibilities and the enforcement of a juvenile court’s order against a parent, Subchapter C grants parents, guardians and custodians specific rights within the juvenile justice process. For example, the parent of a child who is referred to juvenile court is entitled, “as soon as practicable after the referral,” to the following information:

- the date and time of the offense;
- the date and time the child was taken into custody;
- the name of the offense and its penal category;
- the type of weapon, if any, that was used;
- the type of property taken or damaged and the extent of damage, if any;
- the physical injuries, if any, to the victim of the offense;
- whether the offense was gang-related;
- whether the offense involved consumption of alcohol or the use of an illegal controlled substance;
- if the child was taken into custody with adults or other juveniles, the names of those persons;
- the aspects of the juvenile court process that apply to the child;
- if the child is in detention, the visitation policy of the detention facility that applies to the child;

- the child’s right to be represented by an attorney and the local standards and procedures for determining whether the parent qualifies for a court appointed attorney to represent the child; and
- the methods by which the parent can assist the child with the legal process. (§61.102(a), F.C.)

The staff of the juvenile probation department is obligated to provide the above information, which should be accessible from the law enforcement information provided with the referral.¹² If the child was released into the parent’s custody, the information can be communicated to the parent in person, by telephone, or in writing. (§61.102(b), F.C.) Any information disclosed to a parent under this section is not admissible in court as substantive evidence or as evidence to impeach the testimony of a witness for the state. (§61.102(d), F.C.)

Besides the right to certain information, the parent now also has a specific right of access to his or her child. The parent of a child taken into custody has the right to communicate in person privately with the child for reasonable periods of time while the child is in:

- a juvenile processing office;
- a secure detention facility;
- a secure correctional facility;
- a court-ordered placement facility; or
- the custody of TYC. (§61.103(a), F.C.)

However, law enforcement authorities or juvenile justice personnel may regulate the time, place and conditions of the private, in-person communication between parent and child to prevent disruption of scheduled activities and to maintain the safety and security of the facility. (§61.103(b), F.C.)

Parents now also have the right to submit a written statement to the juvenile court judge, through the juvenile probation department, about the needs of the child or family or any other matter relevant to disposition of the case. The court may later consider this statement at the disposition, modification or discretionary transfer hearing. (§61.104, F.C.) Additionally, a parent who is present in court must also be given a reasonable opportunity to address the court about the needs or strengths of the child or family, or any other matter relevant to disposition of the case. The oral statement is intended to be informal and is not subject to cross-examination by the parties.¹³ The juvenile court judge may consider and act on the statement, as the court considers appropriate. (§61.105, F.C.)

Chapter 61 also makes it clear that the parental rights described do not belong to the child and therefore may not be used by the child or any party as grounds for:

- appeal;
- an application for a post-adjudication writ of habeas corpus; or
- exclusion of evidence against the child in any proceeding or forum. (§61.106, F.C.)

Any violation of Chapter 61 will not result in liability for TYC, a juvenile board, a court, a person appointed by the court, an employee of a juvenile probation department, an attorney for the state, a peace officer or a law enforcement agency. (§61.107, F.C.)

V. Juveniles in Justice and Municipal Court

Justice and municipal courts have jurisdiction over “fine-only misdemeanors” that are not punishable by confinement in jail or imprisonment. (Arts. 4.11 and 4.14, C.C.P.) This includes all fineable

A justice or municipal court, with approval of the city council or the commissioners court, may employ a **juvenile case manager** to provide services in cases involving juvenile offenders before a court consistent with the court’s statutory powers. (Art. 45.056(a)(1), C.C.P.) A court that has implemented a juvenile case manager program may, but is not required to, waive its original jurisdiction of certain offenses. (§51.08(d), F.C.)

misdemeanors committed by children under 17, except public intoxication, which falls under the jurisdiction of the juvenile court. Because juvenile cases in justice and municipal court involve unique procedures and dispositions, “the system for handling these cases resembles a shadow juvenile justice system operating in the lower criminal courts.”¹⁴

Justice and municipal court cases typically involve: (1) traffic offenses; (2) fine-only misdemeanors; (3) alcohol and tobacco violations; and (4) truancy and failure to attend school violations. Unless a justice or municipal court has a **juvenile case manager**, any of these cases, except traffic offenses, must be transferred to juvenile court if the child has at least two prior misdemeanor convictions.

Taking a Child into Custody

A law enforcement officer, including a school district peace officer, simply needs probable cause to believe that a child has committed a fineable offense or an ordinance violation to take that child into custody. (§52.01(a)(3), F.C.) However, a law enforcement officer will usually issue a field release **citation** instead of taking a child into custody for a traffic offense or an offense, other than public intoxication, punishable by fine only. (Art. 45.058(g), C.C.P.) The citation must be signed by the child and becomes the child’s written promise to appear in court at a later date.

A **citation** must contain the name and address of the accused, the offense charged and written notice of the time and place to appear in court. (Art. 14.06(b), C.C.P.)

Justice and municipal court judges may also be requested by law enforcement officials to magistrate juvenile offenders by reading **statutory warnings** to them that are similar to the *Miranda* warnings given to adult offenders. These warnings must be given to a child before making any written statement or confession. The magistrate must be satisfied that the child knowingly, intelligently and voluntarily waives, or gives up, these rights before and during the

The **statutory warnings** every juvenile suspect must receive from a magistrate before making any written statement or confession include:

- the right to remain silent and not make any statement at all and that any statement made may be used against the child;
- the right to have an attorney present to advise the child either before or during any questioning;
- the right to have an attorney appointed before or during any interviews with peace officers or prosecutors, if the child is unable to employ an attorney; and
- the right to terminate the interview at any time. (§51.095(a)(1)(A), F.C.)

making of the statement and signs the statement in the presence of the magistrate. (§51.095(a)(1)(C), F.C.) No law enforcement officer or prosecuting attorney may be present when the statement is signed. (§51.095(a)(1)(B)(i), F.C.) (See page 9 for a more detailed discussion of *Juvenile Confessions*)

A place of nonsecure custody for children must be an unlocked, multipurpose area. A lobby, office or interrogation room is suitable if the area is not designated or used as a secure detention area and is not part of a secure detention area. It may be a juvenile processing office if the area is not locked when it is used as such. (Art. 45.058(c), C.C.P.)

If a juvenile is taken into custody for an offense for which a justice or municipal court has jurisdiction, other than public intoxication, the child must be taken to **a place of nonsecure custody**. (Art. 45.058(b), C.C.P.)

While in a place of nonsecure custody, a child may not be secured physically to a cuffing rail, chair, desk or other stationary object, and must be under continuous visual observation by a law enforcement officer or facility staff person. An

offender cannot be held for longer than is necessary to process the child, take the child before a judge or release the child to his or her parents. A child cannot be detained in a place of nonsecure custody for more than six hours. (Art. 45.058(e), C.C.P.) Additionally, a child may not be fingerprinted or photographed while in law enforcement custody for a fine-only offense, without the consent of a juvenile court. (§58.002(a), F.C.)

Prosecuting a Child in Justice or Municipal Court

All juvenile cases prosecuted in justice or municipal court require the presence not only of the accused child but also of the child's parent or guardian. In all criminal cases involving juveniles, the court must summons one or both parents or guardians to appear in court and must require one or both of them to be present during all court proceedings. (Art. 45.0215, C.C.P.) By law, the summons must contain an order requiring the parent to appear personally in court with the child or risk being arrested and charged with failure to appear, a Class C misdemeanor. (Art. 45.057(e) and (g), C.C.P.)

Since 2003, a child and parent who are required to appear in a justice or municipal court must provide the current address and residence of the child to the court in writing. This obligation does not end when the child turns 17, but rather on discharge and satisfaction of the judgment or final disposition not requiring a finding of guilt. (Art. 45.057(h), C.C.P.) The child and parent are entitled to written notice of this obligation and it is an affirmative defense to prosecution that the child and parent were not informed of their obligation to furnish the current address and residence of the child. (Art. 45.057(j) and (k), C.C.P.)

If a juvenile is convicted of a fine-only offense, other than a traffic offense, the court may enter an order:

- referring the child or the child's parent for early youth intervention services under §264.302 of the Family Code;

- requiring the child to attend a special program determined to be in the child’s best interest, such as programs for rehabilitation, counseling, self-esteem and leadership, work and job skills training, job interviewing and work preparation, self-improvement, parenting, manners, violence avoidance, tutoring, sensitivity training, parental responsibility, community service, restitution, advocacy or mentoring; or
- requiring that the child’s parent do any act or refrain from doing any act that the court deems reasonable and necessary for the welfare of the child, including:
 - ▶ attend a parenting class or parental responsibility program; and
 - ▶ attend the child’s school classes or function. (Art. 45.057(b). C.C.P.)

The justice or municipal court may also order a parent or guardian required to attend a program, class or function to pay up to \$100 for the cost of the program and to submit proof of attendance to the court. (Art. 45.057(c) and (d), C.C.P.) Such court orders are enforceable by **contempt of court**. A recent opinion by the Attorney General has stated that a justice court may not punish a child for contempt of court with three days’ confinement in a juvenile facility for violating a justice court order.¹⁵

Failure to obey a justice or municipal court order may result in **contempt of court**. A justice or municipal court, after providing notice and an opportunity to be heard, may refer a child to juvenile court for delinquent conduct for contempt of the justice or municipal court order or retain jurisdiction of the case, hold the child in contempt, and order either or both of the following:

- a fine not to exceed \$500; or
- that DPS suspend or deny the child’s driver’s license or permit until the child has fully complied with the court’s orders. (Art. 45.050(c), C.C.P.)

Parents held in **contempt of court** may be fined up to \$100 and/or incarcerated for up to three days. (§21.002(c), G.C.) However, a justice or municipal court judge may not order the confinement of a juvenile for failure to pay all or any part of a fine or costs imposed for the conviction of a fine-only offense or contempt of another court order. (Art. 45.050(b), C.C.P.)

The law provides that a 17-year-old who has been previously convicted of one fineable misdemeanor or one violation of a penal ordinance, may petition the justice or municipal court for an **expunction** of that conviction. (Art. 45.0216, C.C.P.) The person must make a written request to have the record expunged and the request must be under oath. (Art. 45.0216(c), C.C.P.) A justice or municipal court judge must inform the person and any parent in open court of the expunction rights and provide a copy of the applicable statute. (Art. 45.0216(e), C.C.P.)

An **expunction** means the removal of a conviction from a person’s criminal record. (See, Ch.55, C.C.P.)

A recent legislative amendment expressly prohibits young adults accused of fine-only offenses while children from being arrested and detained in secure custody once they reach age 17.¹⁶ (Art. 45.060(a), C.C.P.) However, on or after an individual’s 17th birthday, if the court has made every effort to secure that person’s appearance in court without success, a notice of continuing obligation to appear

may be issued. (Art. 45.060(b), C.C.P.) Failure to appear as ordered constitutes a separate Class C misdemeanor, but it is an affirmative defense to prosecution that the individual was not informed of the continuing obligation and did not receive notice as required by law. (Art. 45.060 (c) and (d), C.C.P.)

Alcohol Violations

Justice and municipal courts have jurisdiction over Alcoholic Beverage Code violations that do not include confinement as possible punishment. (Arts. 4.11 and 4.14, C.C.P.) The list of alcohol-related offenses with which minors under age 21 can be charged include:

- Purchase of Alcohol by a Minor (§106.02, A.B.C.);
- Attempt to Purchase Alcohol by a Minor (§106.025, A.B.C.);
- Consumption of Alcohol by a Minor (§106.04, A.B.C.);
- Driving under the Influence of Alcohol by Minor (§106.041, A.B.C.);
- Possession of Alcohol by a Minor (§106.05, A.B.C.); and
- Misrepresentation of Age by a Minor (§106.07, A.B.C.).

The first or second offenses under these statutes are fine-only Class C misdemeanors, but a minor older than 17 can receive a fine of not less than \$250 or more than \$2,000, or confinement in jail for up to 180 days, or both, as punishment for a third conviction. (§106.071(c), A.B.C.) A justice or municipal court must transfer the case of a minor under 17 to a juvenile court if the child has two prior convictions for any Alcoholic Beverage Code offense, or any fine-only offenses other than traffic offenses or public intoxication. (§51.08(b)(1), F.C.) A justice or municipal court may waive its jurisdiction and refer a child to juvenile court regardless of whether there are prior convictions, except in cases involving traffic offenses and public intoxication. (§51.08(b)(2), F.C.)

In addition to assessing a fine, a justice or municipal court judge must order a minor convicted of an alcohol-related offense to perform community service for:

- not less than eight or more than 12 hours, if the minor has not been previously convicted; or
- not less than 20 or more than 40 hours, if the minor has once been previously convicted. (§106.071(d)(1), A.B.C.)

The community service must relate to education about or prevention of the misuse of alcohol, if such programs or services are available in the court's community. If such programs or services are not available, the court may order any community service considered appropriate for rehabilitative purposes. (§106.071(e), A.B.C.)

A minor convicted of an alcohol-related offense must also attend an alcohol awareness program approved by the Texas Commission on Alcohol and Drug Abuse (TCADA). If the conviction is for a subsequent offense, the court may or may not require participation in the alcohol awareness program. However, if the accused is younger than 18, the court may also require the parent or guardian of the youth to attend the program as well. (§106.115(a), A.B.C.)

A minor has 90 days to complete the program and return in person to the court with proof of completion. For good cause, the court may extend this period for no more than 90 additional days. If the accused presents proof of completion, the court may reduce the fine to an amount equal to but not less than one-half of the amount of the initial fine. (§106.115(c), A.B.C.) Failure to complete the program or present proof of completion in the time required, will result in the court ordering DPS to suspend the minor's driver's license or permit for not more than six months. (§106.115(d), A.B.C.)

In addition to a fine, community service, and an alcohol awareness program, a justice or municipal court must order DPS to suspend the driver's license or permit of a convicted minor for:

- 30 days, if the minor has not previously been convicted;
- 60 days, if the minor has once previously been convicted; and
- 180 days, if the minor has twice previously been convicted. (§106.071(d)(2), A.B.C.)

A driver's license suspension under this section takes effect on the 11th day after the date the minor was convicted. (§106.071(h), A.B.C.)

Tobacco Violations

An individual who is younger than 18 commits an offense if he or she possesses, purchases, consumes, or accepts a cigarette or tobacco product or falsely represents himself or herself to be 18 or older to obtain possession of, purchase or receive a cigarette or tobacco product. (§161.252(a), H.S.C.)

The Health and Safety Code specifically provides that Title 3 of the Family Code, known as the Juvenile Justice Code, does not apply to proceedings under the subchapter dealing with "Tobacco Use by Minors." (§161.257, H.S.C.) Consequently, third or subsequent cases involving tobacco use by children cannot be transferred to juvenile court. Tobacco offenses also may not be considered when determining whether to transfer cases to juvenile court based on prior non-traffic convictions.

All tobacco offenses are punishable by a fine not to exceed \$250. (§161.252(d), H.S.C.) On a first conviction, the court must suspend execution of the fine and require the minor to attend a tobacco awareness program approved by the Texas Health and Human Services Commission. The court may also require the parent or guardian to attend the program with the minor. (§161.253(a), H.S.C.) If a minor lives in an area where access to a tobacco awareness program is not readily available, the court must require the minor to perform eight to 12 hours of tobacco-related community service instead of attending the tobacco awareness program. (§161.253(c), H.S.C.) Proof of completing the program or the community service must be presented to the court within 90 days after the date of conviction. (§161.253(e), H.S.C.)

If a minor provides proof of completion and has been previously convicted of a tobacco-related offense, the court must impose the fine but may reduce it to not less than half the previously assessed fine amount. A minor who provides proof of completion and has not previously been convicted, will have the charges dismissed. (§161.253(f), H.S.C.) But, if a minor whose case has been dismissed is later convicted of another tobacco-related offense, the dismissal will be treated as a conviction and the subsequent case will count as a second conviction. (§161.253(g), H.S.C.)

If a minor fails to show proof of completion as required within 90 days, the court must order DPS to suspend or deny issuance of any driver's license to the accused. The order must specify the period of the suspension or denial and may not exceed 180 days after the date of the order. (§161.254(a), H.S.C.)

Truancy and Failure to Attend School

Justice and municipal courts frequently handle truancy cases that are either transferred from juvenile court or filed directly as "failure to attend school." Under the Family Code, the CINS offense of truancy requires the child to be absent from school on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period. (§51.03(b)(2), F.C.) "Failure to attend school" contains the same elements as truancy, but is prosecuted in the constitutional county court (if the county has a population of two million or more), or in justice or municipal court, depending on where the individual student resides or where the school is located. (§25.094(a) and (b), E.C.) If a county has a population of less than 100,000, the school district can refer a student to a juvenile court for failing to attend school. (§25.0951, E.C.) "Parent contributing to nonattendance" is another type of Class C misdemeanor that can be filed in the constitutional county court, or in justice or municipal court. This offense is committed when a parent, with criminal negligence, fails to require a child to attend school as required by law. (§25.093, E.C.)

Transfer from Juvenile Court

A juvenile court may transfer a child to an appropriate constitutional county court, or to justice or municipal court, with the permission of the lower court, if the juvenile is charged with committing truancy. (§54.021(a), F.C.) A county, justice or municipal court may then exercise jurisdiction over an alleged truant if:

- the juvenile court has waived its original jurisdiction; and
- a complaint is filed in the county, justice or municipal court charging the offense of failure to attend school. (§54.021(b), F.C.)

A truancy case that is transferred from juvenile court must be re-filed in the county, justice or municipal court as a failure to attend school case, as defined by the Education Code.

Failure to Attend School

The offense of failure to attend school is a Class C misdemeanor. (§25.094(e), E.C.) By law, the student's parent must appear in court personally and bring the student to the hearing. When the hearing begins, the judge must inform the student and the parent of the student's right to later expunge, or erase, any record of the proceedings. The judge must also provide a written copy of the law which contains the expunction provision. (Art. 45.054(e), C.C.P.)

If a county, justice, or municipal court finds that an individual has failed to attend school as required by law, the judge can order that individual to attend:

- school without unexcused absences;
- a preparatory class for the high school equivalency examination, if the court determines the individual is too old to do well in a formal classroom setting, or take the equivalency examination if the individual is at least 16 years old;
- an alcohol and drug abuse program;
- a rehabilitation program;
- a counseling program, including self-improvement counseling;
- a program that provides training in self-esteem and leadership;
- a work and job skills training program;
- a program that provides training in parenting, including parental responsibility;
- a program that provides training in manners;
- a program that provides training in violence avoidance;
- a program that provides sensitivity training;
- a program that provides training in advocacy and mentoring; and
- a class for students at risk of dropping out of school designed for both the individual and the individual's parent. (Art. 45.054(a)(1)-(3), C.C.P.)

A county, justice or municipal court can also require the individual to complete reasonable community service requirements or to participate in a tutorial program provided by the individual's school. (Art. 45.054(a)(4)-(5), C.C.P.) Since 2003, if a juvenile court in a county with a population of less than 100,000 makes a finding that an individual has committed the offense of failure to attend school, that court can also impose any of the orders described in Art. 45.054(a). (Art. 45.054(a-1), C.C.P.)

If a juvenile fails to obey a justice or municipal court order, the court, after providing notice and an opportunity to be heard, may:

- refer the child to the appropriate juvenile court for delinquent conduct for contempt of the justice or municipal court order; or
- retain jurisdiction of the case, hold the child in contempt of court, and order either or both of the following:
 - ▶ that the child held in contempt pay a fine not to exceed \$500; or
 - ▶ that DPS suspend the person's driver's license or permit, or deny the issuance of a license or permit, until the person fully complies with the orders of the court. (Art. 45.050(c), C.C.P.)

As a general rule, a justice or municipal court may not order the confinement of a child for failing to pay a fine or court costs imposed for the conviction of a fine-only offense or for contempt of any other court order. (Art. 45.050(b), C.C.P.) Attorney General Opinion No. GA-0131 qualified this point with regard to the authority of a juvenile court to detain a child who is charged with contempt of a justice or municipal court order. The opinion stated that such a detention may be warranted, but only if it is justified under §53.02, F.C. (Release from Detention) and §54.01 (Detention Hearing). Under no circumstance may a juvenile court order a child adjudicated for contempt of a justice or municipal court order to be placed in a secure correctional facility.

An order requiring a parent to attend a class for students at risk of dropping out of school is enforceable by contempt and a parent commits a Class C misdemeanor by failing to appear in court with his or her child after receiving notice to do so. Additionally, a justice, municipal or juvenile court may order DPS to suspend or deny issuance of the individual's driver's license or permit for a period specified by the court not to exceed one year. (Art. 45.054(b), (d) and (f), C.C.P.)

Parent Contributing to Nonattendance

It is a Class C misdemeanor if a parent, with criminal negligence, fails to require his or her child to attend school as required by law and the child has absences for the amount of time specified by law. (§25.093(a), E.C.) Texas law requires the school district to issue a **warning notice** to parents about the consequences of not ensuring their student's attendance at school.

A school district or open-enrollment charter school must send a student's parent a **warning notice** in writing at the beginning of the school year explaining that if the student is absent from school on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period:

- the student's parent is subject to prosecution for parent contributing to nonattendance; and
- the student is subject to prosecution for failure to attend school or to referral to a juvenile court in a county with a population of less than 100,000. (§25.095(a), E.C.)

A school district must also notify a student's parent if the student has been absent from school, without a legitimate excuse, on three days or parts of days within a four-week period.

The notice must inform the parent that:

- it is the parent's duty to monitor the student's school attendance and require the student to attend school, and
- the parent is subject to prosecution for parent contributing to nonattendance.

The notice must also request a conference between school officials and the parent to discuss the absences. (§25.095(b), E.C.)

If a parent is filed on for contributing to nonattendance, an attendance officer or any other appropriate school official will file a complaint against the parent in a county, justice or municipal court, either where the parent resides or where the school is located. Each day the child remains out of school may constitute a separate offense and two or more offenses may be consolidated and prosecuted in a single action. (§25.093(b) and (c), E.C.) It is an affirmative defense to prosecution that one or more of the absences required to be proven was excused by a school official or should be excused by the court. The burden is on the parent to show that the absence has been or should be excused. (§25.093(h), E.C.)

If a parent is convicted or placed on probation for contributing to nonattendance, a justice or municipal court may order the parent to attend a program for parents of students with unexcused absences designed to help identify problems that contribute to the student's unexcused absences and to develop strategies for a solution, if such a program is available. (§25.093(f), E.C.) If a parent refuses to obey a court order, the violation is punishable by contempt. (§21.002, G.C.)

Appendix

State Resources To Help At-Risk Juveniles

There are a number of state entities that offer resources that address juvenile justice issues. The following is a list of various state agencies that provide assistance:

Comptroller of Public Accounts

Local Government Division
(512) 463-4679
www.window.state.tx.us

Health and Human Services Commission

Early Childhood Intervention
(512) 424-6745
www.eci.state.tx.us

Office of the Attorney General

www.oag.state.tx.us

Juvenile Crime Intervention
jci@oag.state.tx.us
(512) 463-4024

Child Support Division
(800) 252-8014
<http://childsupport.oag.state.tx.us/>

Crime Victims' Compensation
(512) 936-1200
(800) 983-9933
crimevictims@oag.state.tx.us

County Affairs
(512) 463-2060

Municipal Affairs
(512) 475-4683

Nuisance Abatement
(512) 463-2529

Office of the Governor

Criminal Justice Division
(512) 463-1919
www.governor.state.tx.us/division/cjd

Texas Commission on Alcohol Abuse and Drug Abuse

Coordination of substance abuse services, information, education and training
(512) 349-6644 (Training and publications)
(800) 832-9623 (General information)
www.tcada.state.tx.us

Texas Department of Aging

Retired Senior Volunteer Programs
(512) 916-6062
(888) 622-9111 (general information)
www.aaacap.org

Texas Department of Criminal Justice

Crime Victims' Services
(800) 848-4284
vicim.svc@tdcj.state.tx.us
www.tdcj.state.tx.us

Texas Department of Health

Office of Tobacco Prevention and Control
(512) 458-7402
www.tdh.state.tx.us/otpc/link.htm

Texas Department of Health

Public Health Promotion
(512) 458-7405
www.tdh.state.tx.us

Texas Department of Health

TDH Family Planning Program (teen pregnancy, clinics, etc.)
(512) 458-7496
www.tdh.state.tx.us/women/pandp.htm

Texas Department of Housing and Community Services

(512) 475-3800
www.tdhca.state.tx.us

Community Development Block Grants Program
(512) 475-3950

Services for the Homeless (Funding)
(512) 475-3950

Local Government Section
(512) 475-3806

Texas Department of Human Services

Nutrition Program/Child and Adult Care Food Programs/Medicaid for Families and Children/
Food Stamp Program
(512) 420-2525
www.dhs.state.tx.us/programs/index.html

Texas Department of Mental Health/Mental Retardation

Mental Health/Mental Retardation Services
(512) 454-3761
www.mhmr.state.tx.us

Texas Department of Family and Protective Services

Child Care Licensing
(512) 908-9650
Child Care Information
(800) 233-3405
www.tdprs.state.tx.us

Child Protective Services
(800) 252-5400 (abuse hotline)
www.tdprs.state.tx.us

Communities in Schools (CIS)
(512) 438-4800
(800) CIS-4KIDS
www.tdprs.state.tx.us
www.CISNET.org (national website)

Services to At-Risk Youth (STAR)
(512) 438-4800
www.tdprs.state.tx.us

Foster Care and Adoption Inquire Line
(800) 233-3405
www.tdprs.state.tx.us

Texas Runaway Hotline
(888) 580-4357
www.tdprs.state.tx.us

Texas Youth Hotline (At-Risk Youth)
(800) 210-2278
www.tdprs.state.tx.us

Texas Education Agency

(512) 463-9734

www.tea.state.tx.us

Safe and Drug Free Schools

(512) 463-9982

Education Service Centers (Regionally based)

(512) 475-0228

Guidance and Counseling

(512) 463-9498

Texas Health and Human Services Commission

Children's Health Insurance Program (CHIP)

(800) 647-6558

www.hhsc.state.tx.us/chip/index.html

Texas Juvenile Probation Commission

(512) 424-6700

www.tjpc.state.tx.us

Texas School Safety Center at Texas State University

(512) 245-3696

www.txssc.swt.edu

Texas Workforce Commission

School to Careers in Texas

(512) 223-7086

www.twc.state.tx.us

Project Reintegration of Offenders (Project RIO)

(800) 453-8140

www.twc.state.tx.us/svcs/rio.html

Texas Youth Commission

Office of Prevention

(512) 424-6130

www.tyc.state.tx.us/prevention

Office of Education for Homeless Children

University of Texas

(800) 466-3142

www.utdanacenter.org/OEHCY/

Endnotes

1. The Department of Protective and Regulatory Services has been renamed the Department of Family and Protective Services. *See*, Act of June 1, 2003, 78th Leg., R.S., ch. 198, § 1.27, 2003 Tex. Sess. Law Serv. 611, 641 (a reference in law to the Department of Protective and Regulatory Services means the Department of Family and Protective Services).
2. TJPC, *Overview of the Texas Juvenile Justice System*, p. 3.
3. Ryan Turner, *Adjudication of Juveniles in Municipal and Justice Courts*, p. 1.
4. TJPC, *The State of Juvenile Probation Activity in Texas-2002*, p.10.
5. TJPC, *Overview of the Texas Juvenile Justice System*, p. 4.
6. Robert Dawson, *Texas Juvenile Law, 5th Edition*, p. 6.
7. Attorney General Opinion No. OR 2001-5349 (2001).
8. Attorney General Opinion No. DM-294 (1994).
9. TJPC, *The State of Juvenile Probation Activity in Texas-2000*, p. 27.
10. State Bar Section Report on Juvenile Law, *2003 Special Legislative Issue*, vol. 17, no. 3, p. 30 (August 2003), Commentary by Lisa Capers.
11. *Id.* at p. 32, Commentary by Robert Dawson.
12. *Id.* at p. 37.
13. *Id.* at p. 38.
14. Robert Dawson, *Texas Juvenile Law, 5th Edition*, p. 395.
15. Attorney General Opinion No. JC-0454 (2002).
16. State Bar Section Report on Juvenile Law, *2003 Special Legislative Issue*, vol. 17, no. 3, pp. 77-78 (August 2003), Commentary by Ryan Kellus Turner.