

CHAPTER 1040

S.B. No. 17

AN ACT

relating to the continuation, membership, operation, and administration of the Texas Juvenile Probation Commission, judicial proceedings involving juveniles, the powers and duties of juvenile boards, and the application of penal statutes to children and providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subdivision (3), Section 75.002, Human Resources Code, is amended to read as follows:

(3) "Juvenile board" means the body established by general or special law to provide juvenile probation services to each county ~~[or the juvenile court as designated under Article 5138d, Revised Civil Statutes of Texas, 1925, as amended].~~

SECTION 2. Section 75.022, Human Resources Code, is amended to read as follows:

Sec. 75.022. **MEMBERSHIP.** (a) The commission consists of ~~two~~ *three* judges of the district courts of Texas, *one county judge or commissioner*, and six *representatives of the general public* ~~[citizens of Texas]~~ who are not employed in the criminal or juvenile justice system, all to be appointed by the governor with the advice and consent of the senate. *Appointments to the commission shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees.*

(b) A district judge's service on the commission is an additional duty of office. The district judges on the commission must, at the time of their appointment, be presiding judges over courts designated by at least one county in their district as a juvenile court except that in counties in which a system of rotating the juvenile court among the several district courts exists, any of the district court judges is eligible to serve on the commission.

SECTION 3. Subchapter B, Chapter 75, Human Resources Code, as amended, is amended by adding Section 75.0221 to read as follows:

Sec. 75.0221. **QUALIFICATIONS.** (a) *A person is not eligible for appointment to the commission as a public member if the person or the person's spouse:*

(1) *owns or controls directly or indirectly more than a 10 percent interest in a business entity or other organization regulated by or receiving funds from the commission; or*

(2) *uses or receives a substantial amount of tangible goods, services, or funds from the commission, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.*

(b) *An officer, employee, or paid consultant of a trade association in the field of criminal or juvenile justice may not be a member of the commission. A person who is the spouse of an officer, employee, or paid consultant of a trade association in the field of criminal or juvenile justice may not be a member of the commission. For the purpose of this subsection, a trade association is a nonprofit, cooperative, voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual or professional problems and in promoting their common interests.*

(c) *A person who is required to register as a lobbyist under Chapter 305, Government Code, by virtue of the person's activities for compensation in or on behalf of a profession related to the operation of the commission may not serve as a member of the commission.*

SECTION 4. Subchapter B, Chapter 75, Human Resources Code, as amended, is amended by adding Section 75.0261 to read as follows:

Sec. 75.0261. **REMOVAL FROM OFFICE.** (a) *It is a ground for removal from the commission if a member:*

(1) does not have at the time of appointment the qualifications required by Subsection (a) of Section 75.0221 of this chapter for appointment to the commission;

(2) does not maintain during the member's service on the commission the qualifications required by Subsection (a) of Section 75.0221 of this chapter for appointment to the commission;

(3) violates a prohibition established by Subsection (b) or (c) of Section 75.0221 of this chapter;

(4) is unable to discharge the member's duties for a substantial part of the term for which the member was appointed because of illness or disability; or

(5) is absent from more than one-half of the regularly scheduled commission meetings that the member is eligible to attend during each calendar year, except when the absence is excused by majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it was taken when a ground for removal of a member of the commission existed.

(c) If the director has knowledge that a potential ground for removal exists, the director shall notify the chairman of the commission of the ground. The chairman of the commission shall then notify the governor that a potential ground for removal exists.

SECTION 5. Section 75.027, Human Resources Code, is amended to read as follows:

Sec. 75.027. TEXAS ADVISORY COUNCIL ON JUVENILE SERVICES. (a) An advisory council on juvenile services is created. The advisory council [~~to be appointed by the commission~~] shall consist of:

(1) two juvenile judges appointed by the commission;

(2) [1] three juvenile probation officers appointed by the commission;

(3) [1] two citizens knowledgeable of juvenile services appointed by the commission;

(4) the executive director [~~and a representative~~] of the Texas Youth Commission or a representative selected by the executive director;

(5) the commissioner of education or a representative selected by the commissioner; and

(6) the commissioner of human services or a representative selected by the commissioner.

(b) The advisory council shall [~~Council to~~] report to the director of the Texas Juvenile Probation Commission.

(c) The advisory council shall determine the needs and problems of county juvenile boards and departments and shall assist the commission in long-term planning.

SECTION 6. Section 75.028, Human Resources Code, is amended to read as follows:

Sec. 75.028. DIRECTOR AND EMPLOYEES. (a) The commission shall employ a director, whose qualifications must comply with the standards required for a probation officer and who has a minimum of two years' experience in the administration and supervision of probation services. The director may employ as many other employees as are needed to administer this chapter.

(b) An officer, employee, or paid consultant of a trade association in the field of criminal or juvenile justice may not be an employee of the commission. A person who is the spouse of an officer, employee, or paid consultant of a trade association in the field of criminal or juvenile justice may not be an employee of the commission, including an employee exempt from the state's position classification plan, who is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule. For the purpose of this subsection a trade association is a nonprofit, cooperative, voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual or professional problems and in promoting their common interests.

(c) *A person who is required to register as a lobbyist under Chapter 305, Government Code, by virtue of the person's activities for compensation in or on behalf of a profession related to the operation of the commission may not act as the general counsel to the commission. [The commission may delegate authority to the director to select employees of the commission.]*

SECTION 7. Subchapter B, Chapter 75, Human Resources Code, as amended, is amended by adding Sections 75.0281, 75.0282, 75.0283, and 75.0284 to read as follows:

Sec. 75.0281. POLICY STATEMENT. (a) The director shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity by which all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin.

(b) The policy statement shall include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the commission's work force that meets federal or state guidelines;

(3) procedures by which a determination can be made of significant underutilization in the commission's work force of all persons of whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address areas of significant underutilization in the commission's work force of all persons of whom federal or state guidelines encourage a more equitable balance.

(c) The policy statements shall be filed with the governor's office, cover an annual period, and be updated at least annually. The governor's office shall develop a biennial report to the legislature based on the information submitted. The report may be made separately or as a part of other biennial reports made to the legislature.

Sec. 75.0282. CAREER LADDER. The director shall develop an intraagency career ladder program, one part of which shall require the intraagency posting, concurrently with any public posting, of all nonentry level positions.

Sec. 75.0283. EMPLOYEE EVALUATIONS AND MERIT PAY. The director shall develop a system under which the job performance of commission employees is evaluated annually. All merit pay for commission employees must be based on the system established under this section.

Sec. 75.0284. PROFESSIONAL INFORMATION FOR MEMBERS AND EMPLOYEES. The commission shall inform its members and employees as often as is necessary of:

(1) qualifications for office or employment prescribed by this chapter; and

(2) their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

SECTION 8. Section 75.029, Human Resources Code, as amended, is amended to read as follows:

Sec. 75.029. APPLICATION OF SUNSET ACT. The commission is subject to the Texas Sunset Act (Chapter 325, Government Code) [(Article 5429k, Vernon's Texas Civil Statutes)]. Unless continued in existence as provided by that Act, the Texas Juvenile Probation Commission is abolished and this chapter expires September 1, 1999 [1987].

SECTION 9. Section 75.041, Human Resources Code, as amended, is amended to read as follows:

Sec. 75.041. STANDARDS FOR JUVENILE BOARDS, PROBATION OFFICERS, AND FACILITIES. (a) The [Based on local information and evidence gathered through public hearings around the state, the] commission shall promulgate [reasonable] rules that apply to [for] juvenile boards, probation officers, programs, and facilities that provide:

(1) [~~establishing~~] minimum standards for personnel, staffing, case loads, programs, facilities, record keeping, equipment, and other aspects of the operation of a juvenile board necessary for the provision of adequate and effective probation services;

(2) [~~establishing~~] a code of ethics for probation officers and [~~providing~~] for the enforcement of the code;

(3) [~~establishing~~] appropriate educational, preservice and in-service training, and certification standards for probation officers or court-supervised community-based program personnel; and

(4) [~~establishing~~] minimum standards for juvenile detention facilities.

(b) *The rules, including amendments to the rules, must be reasonable and be based on local information and evidence gathered through public review and comment.*

SECTION 10. Section 75.042, Human Resources Code, is amended to read as follows:

Sec. 75.042. MINIMUM STANDARDS. (a) To be eligible for appointment as a probation officer, a person who *has not been* [~~is not~~] employed as a juvenile probation officer *since* [~~on~~] September 1, 1981, must:

(1) be of good moral character;

(2) have acquired a bachelor's degree conferred by a college or university accredited by an accrediting organization recognized by the Coordinating Board, Texas College and University System;

(3) have either:

(A) one year of graduate study in criminology, corrections, counseling, law, social work, psychology, sociology, or other field of instruction approved by the commission; or

(B) one year of experience in full-time case work, counseling, community or group work in a social service, community, corrections, or juvenile agency that deals with offenders or disadvantaged persons and that is determined by the commission to provide the kind of experience needed to meet this requirement; and

(4) have satisfactorily completed the course of preservice training or instruction, have passed the tests or examinations, and possess the level of certification as the commission may prescribe.

(b) [~~(d)~~] The commission may make rules under which the requirement of a year of graduate study or full-time employment experience may be waived if the authority responsible for the employment of the probation officer establishes in a manner satisfactory to the commission that no person meeting this requirement could be located to fill a job opening after a diligent effort to locate a person was made. The commission may make rules providing for the temporary employment of a person who has not yet completed a course of preservice training, passed the examination, nor attained a prescribed level of certification, the employment to be contingent on his completing those requirements within the time specified by the commission.

(c) [~~(e)~~] Any person to be eligible for employment by a probation office in a position having the responsibility for supervision of other probation officers must possess a level of training, experience, and certification as the commission prescribes, and several levels of certification may be required to reflect increasing levels of responsibility. However, no rule of the commission with regard to required levels of certification may affect the continued employment of a probation officer in a supervisory position that he is holding on the date that the rule takes effect.

(d) *The commission may waive any certification requirement, except for a fee requirement, for an applicant with a valid certification from another state that has certification requirements that are substantially equivalent to those of this state.*

(e) [~~(f)~~] A peace officer, a prosecuting attorney, and any other person who is employed by or who reports directly to a law enforcement or prosecution official may not act as a probation officer or be made responsible for supervision of a juvenile on probation. A probation officer may not carry a firearm in the course of his official duties.

SECTION 11. Subchapter C, Chapter 75, Human Resources Code, as amended, is amended by adding Sections 75.0421, 75.0422, and 75.0423 to read as follows:

Sec. 75.0421. NOTICE OF CERTIFICATION EXAMINATION RESULTS. Not later than the 30th day after the date on which any certification examination is administered under this chapter, the commission shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the commission shall notify examinees of the results of the examination not later than the 14th day after the date on which the commission receives the results from the testing service. If the notice of the examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the commission shall notify the examinee of the reason for the delay before that 90th day.

Sec. 75.0422. ANALYSIS OF EXAMINATION PERFORMANCE. If requested in writing by a person who fails any certification examination administered under this chapter, the commission shall furnish the person with an analysis of the person's performance on the examination.

Sec. 75.0423. REVOCATION OR SUSPENSION OF CERTIFICATION. (a) The commission may revoke or suspend a certification, or reprimand a certified officer, for a violation of this chapter or a rule of the commission.

(b) If the commission proposes to suspend or revoke a person's certification, the person is entitled to a hearing before the commission or a hearings officer appointed by the commission. The commission shall prescribe procedures by which all decisions to suspend or revoke are made by or are appealable to the commission.

SECTION 12. Subsection (b), Section 75.046, Human Resources Code, is amended to read as follows:

(b) The executive directors of the Texas Juvenile Probation Commission and the Texas Youth Commission and the commissioners of education, mental health and mental retardation, and human services [Council] shall meet at least quarterly in Austin to discuss mutual problems, resolve conflicts in providing services to juveniles, and make recommendations to the governor and legislature.

SECTION 13. Subsection (b), Section 75.048, Human Resources Code, is amended to read as follows:

(b) The commission shall continuously study the effectiveness of probation services and shall report its findings to the governor and the legislature before each regular legislative session [review and make a written report to the governor and the legislature on or before December 31, 1982, on the current practices in Texas regarding children who are charged with committing offenses that would be a felony if committed by an adult and the disposition of these incidents, charges, or cases].

SECTION 14. Subchapter C, Chapter 75, Human Resources Code, as amended, is amended by adding Sections 75.0481, 75.0482, 75.0483, 75.0484, and 75.0485 to read as follows:

Sec. 75.0481. PUBLIC INTEREST INFORMATION. (a) The commission shall prepare information of public interest describing the functions of the commission and describing the procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the general public and appropriate state agencies.

(b) The commission by rule shall establish methods by which service recipients are notified of the name, mailing address, and telephone number of the commission for the purpose of directing complaints to the commission.

Sec. 75.0482. PUBLIC HEARINGS. The commission shall adopt policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

Sec. 75.0483. FEES. If the General Appropriations Act does not specify the amount of the fee, the commission by rule may establish reasonable and necessary

fees that produce funds sufficient for the administration of this chapter but that do not produce unnecessary fund balances.

Sec. 75.0484. AUDIT. The State Auditor shall audit the financial transactions of the commission at least once during each biennium.

Sec. 75.0485. DIVISION OF RESPONSIBILITIES. The commission shall develop and implement policies that clearly define the respective responsibilities of the members of the commission and the staff of the commission.

SECTION 15. Section 75.049, Human Resources Code, is amended to read as follows:

Sec. 75.049. ANNUAL REPORTS [REPORT]. (a) The commission shall make a report to the governor and to the legislature each year covering its operations and the condition of probation services in Texas during the previous year and making whatever recommendations it considers desirable.

(b) *The commission shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding fiscal year. The form of the annual report and the reporting time are as provided in the General Appropriations Act.*

SECTION 16. Section 75.062, Human Resources Code, is amended to read as follows:

Sec. 75.062. PROVISION OF PROBATION AND DETENTION SERVICES. (a) The commission shall assist counties in providing their own probation and juvenile detention services by encouraging the *continued operation of county and* [establishment of juvenile boards. ~~If two or more counties lack sufficient population to provide adequate juvenile probation and detention services, the commission may assist the counties in establishing~~] multicounty juvenile boards or probation offices.

(b) ~~If a county discontinues the provision of juvenile probation services [does not provide a juvenile probation department or officer before September 1, 1985], the commission may directly provide probation or detention services in the county.~~

SECTION 17. Section 75.063, Human Resources Code, is amended to read as follows:

Sec. 75.063. DETERMINATION OF AMOUNT. The commission shall annually allocate funds for financial assistance to juvenile boards for the provision of juvenile services. The allocation of the funds shall be based on *current estimates of the number of juveniles in each county* [juvenile population] and other factors determined to be appropriate by the commission. The legislature shall determine and appropriate the amount of state aid necessary to supplement local funds for maintenance and improvement of statewide juvenile services which comply with the standards promulgated by the commission. A portion of the funds appropriated to the commission for state aid may be set aside for programs designed to address special needs or projects of local juvenile boards.

SECTION 18. Subchapter D, Chapter 75, Human Resources Code, is amended by adding Section 75.0661 to read as follows:

Sec. 75.0661. COMPLAINTS REGARDING JUVENILE BOARDS. (a) The commission shall keep an information file about each complaint filed with the commission that relates to a juvenile board funded by the commission.

(b) If a written complaint is filed with the commission relating to a juvenile board funded by the commission, the commission, at least as frequently as quarterly and until final disposition of the complaint, shall notify the complainant and the juvenile board of the status of the complaint unless the notice would jeopardize an undercover investigation.

SECTION 19. Section 75.068, Human Resources Code, is amended to read as follows:

Sec. 75.068. REFUSAL, REDUCTION, OR SUSPENSION OF STATE AID. (a) The commission shall refuse, *reduce*, or suspend payment of state aid to any juvenile board that fails to comply with the commission's *rules or standards* or maintain local financial support.

(b) The commission shall provide for notice and a hearing in cases in which it refuses, [or] suspends, or reduces state aid.

SECTION 20. Section 51.03, Family Code, is amended by amending Subsection (b) and adding Subsection (e) to read as follows:

(b) Conduct indicating a need for supervision is:

(1) conduct, other than a traffic offense or other than an offense included in Subdivision (5) of this subsection, *and subject to Subsection (e) of this section*, that ~~on three or more occasions~~ violates either of the following:

(A) the penal laws of this state of the grade of misdemeanor that are punishable by fine only; or

(B) the penal ordinances of any political subdivision of this state;

(2) the unexcused voluntary absence of a child on 10 or more days or parts of days within a six-month period or three or more days or parts of days within a four-week period from school *without the consent of his parents*;

(3) the voluntary absence of a child from his home without the consent of his parent or guardian for a substantial length of time or without intent to return *on at least two separate occasions*;

(4) conduct which violates the laws of this state prohibiting driving while intoxicated or under the influence of intoxicating liquor (first or subsequent offense) or driving while under the influence of any narcotic drug or of any other drug to a degree which renders him incapable of safely driving a vehicle (first or subsequent offense); or

(5) conduct prohibited by city ordinance or by state law involving the inhalation of the fumes or vapors of paint and other protective coatings or glue and other adhesives *and the volatile chemicals itemized in Section 2, Chapter 323, Acts of the 68th Legislature, Regular Session, 1983 (Article 4476-13a, Vernon's Texas Civil Statutes)*.

(e) Conduct described under Subdivision (1) of Subsection (b) of this section does not constitute conduct indicating a need for supervision unless the child has been referred to the juvenile court under Subsection (b) of Section 51.08 of this code.

SECTION 21. Section 51.08, Family Code, is amended to read as follows:

Sec. 51.08. TRANSFER FROM CRIMINAL COURT. *(a)* If the defendant in a criminal proceeding is a child who is charged with an offense other than perjury, ~~or~~ a traffic offense, a misdemeanor punishable by fine only, or a violation of a penal ordinance of a political subdivision, unless he has been transferred to criminal court under Section 54.02 of this code, the court exercising criminal jurisdiction shall transfer the case to the juvenile court, together with a copy of the accusatory pleading and other papers, documents, and transcripts of testimony relating to the case, and shall order that the child be taken to the place of detention designated by the juvenile court, or shall release him to the custody of his parent, guardian, or custodian, to be brought before the juvenile court at a time designated by that court.

(b) A court with jurisdiction for misdemeanors punishable by fine only or violations of penal ordinances of a political subdivision may waive its original jurisdiction and refer a child to juvenile court if the child has previously been convicted of two misdemeanors punishable by fine only, two violations of a penal ordinance of a political subdivision, or one of each.

SECTION 22. Section 53.03, Family Code, as amended, is amended by adding Subsection (e) to read as follows:

(e) The court may adopt a fee schedule for informal adjustment services and rules for the waiver of a fee for financial hardship in accordance with guidelines that the Texas Juvenile Probation Commission shall provide. The maximum fee is \$15 a month. If the court adopts a schedule and rules for waiver, the probation officer or other designated officer of the court shall collect the fee authorized by the schedule from the parent, guardian, or custodian of a child for whom an informal adjustment is authorized under this section or waive the fee in accordance with the rules adopted by the court. The officer shall deposit the fees received under this section in the county treasury to the credit of a special fund that may be used only for juvenile probation or community-based juvenile corrections services or facilities in which a juvenile may be required to live while under court supervision. If the court does not adopt a schedule and rules for waiver, a fee for informal adjustment services may not be imposed.

SECTION 23. Chapter 54, Family Code, as amended, is amended by adding Section 54.0411 to read as follows:

Sec. 54.0411. JUVENILE PROBATION DIVERSION FUND. (a) If a disposition hearing is held under Section 54.04 of this code, the juvenile court, after giving the child, parent, or other person responsible for the child's support a reasonable opportunity to be heard, shall order the child, parent, or other person, if financially able to do so, to pay a fee as costs of court of \$20.

(b) Orders for the payment of fees under this section may be enforced as provided by Section 54.07 of this code.

(c) An officer collecting costs under this section shall keep separate records of the funds collected as costs under this section and shall deposit the funds in the county treasury.

(d) Each officer collecting court costs under this section shall file the reports required under Article 103.005, Code of Criminal Procedure. If no funds due as costs under this section have been collected in any quarter, the report required for each quarter shall be filed in the regular manner, and the report must state that no funds due under this section were collected.

(e) The custodian of the county treasury may deposit the funds collected under this section in interest-bearing accounts. The custodian shall keep records of the amount of funds on deposit collected under this section and not later than the last day of the month following each calendar quarter shall send to the comptroller of public accounts the funds collected under this section during the preceding quarter. The county may retain 10 percent of the funds as a service fee and may retain the interest accrued on the funds.

(f) Funds collected are subject to audit by the comptroller and funds expended are subject to audit by the State Auditor.

(g) The comptroller shall deposit the funds in a special fund to be known as the juvenile probation diversion fund.

(h) The legislature shall determine and appropriate the necessary amount from the juvenile probation diversion fund to the Texas Juvenile Probation Commission for the purchase of services the commission considers necessary for the diversion of any juvenile who is at risk of commitment to the Texas Youth Commission. The Texas Juvenile Probation Commission shall develop guidelines for the use of the fund. The commission may not purchase the services if a person responsible for the child's support or a local juvenile probation department is financially able to provide the services.

SECTION 24. Section 54.06, Family Code, as amended, is amended to read as follows:

Sec. 54.06. JUDGMENTS FOR SUPPORT. (a) At any stage of the proceeding, when [When] a child has been placed [on probation] outside his home, the juvenile court, after giving the parent or other person responsible for the child's support a reasonable opportunity to be heard, shall [may] order the parent or other person to pay in a manner directed by the court a reasonable sum for the support in whole or in part of the child or the court shall waive the payment by order. The court shall order that the payment for support be made to the local juvenile probation department to be used only for residential care and other support for the child unless the child has been committed to the Texas Youth Commission, in which case the court shall order that the payment be made to the Texas Youth Commission for deposit to the General Revenue Fund.

(b) Orders for support may be enforced as provided in Section 54.07 of this code.

~~*(c) Nothing in this section shall be construed so as to authorize support payments for a child committed to the Texas Youth Commission.*~~

SECTION 25. Subsection (a), Section 54.061, Family Code, as amended, is amended to read as follows:

(a) If a child is placed on probation under Section 54.04(d)(1) of this code, the juvenile court, after giving the child, parent, or other person responsible for the child's support a reasonable opportunity to be heard, shall [may] order the child, parent, or other person, if

financially able to do so, to pay to the court a fee of not more than \$15 a month during the period that the child continues on probation.

SECTION 26. Subsections (a) and (b), Section 8.07, Penal Code, as amended, are amended to read as follows:

(a) A person may not be prosecuted for or convicted of any offense that he committed when younger than 15 years of age except:

(1) perjury and aggravated perjury when it appears by proof that he had sufficient discretion to understand the nature and obligation of an oath;

(2) a violation of a penal statute cognizable under Chapter 302, Acts of the 55th Legislature, Regular Session, 1957, as amended (*Article 67011-4, Vernon's Texas Civil Statutes*), except conduct which violates the laws of this state prohibiting driving while intoxicated or under the influence of intoxicating liquor (first or subsequent offense) or driving while under the influence of any narcotic drug or of any other drug to a degree which renders him incapable of safely driving a vehicle (first or subsequent offense);
[~~or~~]

(3) a violation of a motor vehicle traffic ordinance of an incorporated city or town in this state;

(4) *a misdemeanor punishable by fine only; or*

(5) *a violation of a penal ordinance of a political subdivision.*

(b) Unless the juvenile court waives jurisdiction and certifies the individual for criminal prosecution, a person may not be prosecuted for or convicted of any offense committed before reaching 17 years of age except:

(1) perjury and aggravated perjury when it appears by proof that he had sufficient discretion to understand the nature and obligation of an oath;

(2) a violation of a penal statute cognizable under Chapter 302, Acts of the 55th Legislature, Regular Session, 1957, as amended (*Article 67011-4, Vernon's Texas Civil Statutes*), except conduct which violates the laws of this state prohibiting driving while intoxicated or under the influence of intoxicating liquor (first or subsequent offense) or driving while under the influence of any narcotic drug or of any other drug to a degree which renders him incapable of safely driving a vehicle (first or subsequent offense);
[~~or~~]

(3) a violation of a motor vehicle traffic ordinance of an incorporated city or town in this state;

(4) *a misdemeanor punishable by fine only; or*

(5) *a violation of a penal ordinance of a political subdivision.*

SECTION 27. Title 1, Code of Criminal Procedure, as amended, is amended by adding Chapter 57 to read as follows:

CHAPTER 57. SEALING FILES AND RECORDS OF CHILDREN

Art. 57.01. SEALING FILES AND RECORDS OF CHILDREN. A court in which a person under the age of 17 is prosecuted for an offense included under Subdivision (4) or (5) of Subsection (a) or Subdivision (4) or (5) of Subsection (b) of Section 8.07, Penal Code, shall seal the person's files and records in the same manner and under the same conditions that Section 51.16, Family Code, requires a juvenile court to seal the files and records of a person adjudicated or taken into custody under Title 3, Family Code.

SECTION 28. Title 82, Revised Statutes, as amended, is amended by adding Articles 5139.3 and 5139.4 to read as follows:

Art. 5139.3. ADVISORY COUNCILS. Each juvenile board established by statute shall appoint an advisory council consisting of not more than nine citizen members. Members of the council hold office for staggered terms of two years with as near as possible to one-half of the members' terms expiring January 31 of each year. In making its initial appointments, the juvenile board shall designate which council

members' terms are to terminate in even-numbered years and which in odd-numbered years. The juvenile board shall fill any vacancies on the advisory council.

Art. 5139.4. CONTRACTS FOR PROBATION SERVICES. A juvenile board may contract with the Texas Youth Commission for the provision of juvenile probation services.

SECTION 29. Section 75.069, Human Resources Code, is repealed.

SECTION 30. Section 21.302, Education Code, is repealed.

SECTION 31. Section 21.303, Education Code, is repealed.

SECTION 32. Section 21.304, Education Code, is repealed.

SECTION 33. Subsection (b), Section 4.25, Education Code, is amended to read as follows:

(b) If any parent or person standing in parental relation can prove that he is unable to compel his child to attend school, he shall be exempt from the penalties provided in this section and the [his] child may be proceeded against *under provisions of Section 51.03(b) of the Family Code* ~~[as a habitual truant and committed to a state juvenile training school or any other suitable school agreed upon between his parent or person standing in parental relation and the judge of the juvenile court].~~

SECTION 34. This Act takes effect September 1, 1987.

SECTION 35. (a) This Act applies only to offenses and conduct occurring on or after its effective date. For the purposes of this section, an offense or delinquent conduct based on an offense occurs on or after the effective date if all the elements of the offense occur on or after the effective date.

(b) An offense or conduct that occurs before the effective date of this Act shall be prosecuted under the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose only.

SECTION 36. Section 75.022 and Section 75.0221, Human Resources Code, as added by Section 2 and Section 3 of this Act, do not apply to members of the Texas Juvenile Probation Commission in office on the effective date of this Act during their current terms of office.

SECTION 37. The first policy statements filed under Subsection (c), Section 75.0281, Human Resources Code, as added by Section 7 of this Act, shall be filed on or before November 1, 1987.

SECTION 38. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 9, 1987, by a viva-voce vote; and that the Senate concurred in House amendments on May 26, 1987, by a viva-voce vote. Passed the House, with amendments, on May 22, 1987, by a non-record vote.

Approved June 20, 1987.

Effective Sept. 1, 1987.