TEXAS JUVENILE PROBATION MANUAL

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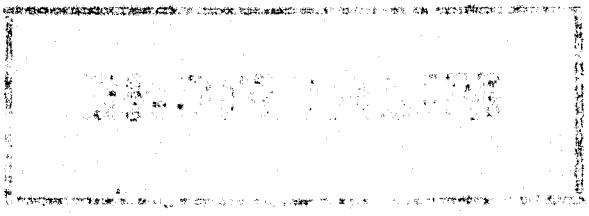

FOREWORD

This Manual was prepared to enhance the effectiveness of county juvenile probation officers in the state of Texas.

It is designed primarily to be a practical procedural manual to answer many questions confronting probation offices daily and secondarily to be a resource for orientation and training. Each probation office operates in a different environment with different resources available to it and different local practices established. Each office will probably wish to make additions, deletions and modifications in what is suggested here.

I commend the Manual to you. If in your use of it you find errors, omissions or needed changes, I would appreciate your advising the Judicial Council staff so they may make any necessary corrections.

The Manual in its present form will undoubtedly be subject to further revision and refinement, as laws and court decisions alter procedures and as information increases on particular problems and skills. The Judicial Council will keep the Manual up to date by furnishing you looseleaf additions from time to time.

Martin Dies, Jr.
President
Texas Judicial Council

March, 1977

AUTHOR'S NOTE

This Manual represents the culmination of many hours of work and devoted effort by a task force of twenty juvenile probation officers-representing both large and small departments, and both urban and rural departments geographically dispersed throughout the State of Texas. This Task Force, chaired by Mr. Charles W. Hawkes of Beaumont and under a grant from the Criminal Justice Division, which provided per diem and travel expenses, met on several occasions to direct the development of a series of drafts which they then reviewed. The Task Force feels that this Manual will contribute to a better understanding of the role of probation and to better probation services throughout the State.

I hope the Manual will be useful. I solicit your suggestions for its improvement.

Jim Hutcheson
Chief Counsel
Texas Judicial Council

March, 1977

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PROBATION DEPARTMENTS

GENERAL INTRODUCTION TO PROBATION

Juvenile Probation is essentially a legal status conferred by a juvenile court which allows the child to remain in the community under the supervision and guidance of a probation officer. It entails: 1) a judicial finding that some behavior of the child is legally inappropriate; 2) imposition of conditions attached to his continued freedom; and 3) diagnosis of the problem and assessment of whether probation conditions are being met. Probation is therefore, much more than surveillance to insure behavioral change. Its purpose is to help the individual develop his potential and his sense of responsibility to himself and to the community.

Most juvenile probation departments perform functions in the community other than the supervision of post-disposition probationers--most commonly, intake and the operation or supervision of detention facilities.

In the intake function, a juvenile probation department must initially determine the most beneficial disposition of a particular individual. Will that child benefit from detention, legal proceedings, referral to a social agency, placement in a residential treatment center or foster home, or by merely counseling by departmental staff members?

In order for a child to be detained, it must be determined that he: 1) is likely to abscond or be removed from the jurisdiction of the Court; 2) suitable supervision, care, or protection for him is not being provided by a parent, guardian, custodian, or other person; or 3) he has no parent, guardian, custodian, or other person able to return him to the Court when required. If a child must be held in custody at a detention facility, he should be provided with an effective treatment program. A constructive program must accomplish four basic, interrelated objectives:

1. Secure custody which minimizes damaging effects of confinement and physical care which fosters growth;
2. A constructive and satisfying activities program;
3. Individual guidance and counseling;
4. Observation and study of the child to detect emotional or mental problems.

JUVENILE PROBATION IN TEXAS

Juvenile Probation Officers

The usage of the term "juvenile officer" is misleading. It is often used in reference to a police officer or deputy sheriff who works primarily with cases involving juveniles. Many Texas counties use the term to denote the officer who performs probation services for the Juvenile Court. The Texas statutes use the terms "probation officer" and "juvenile officer" interchangeably. *Juvenile "police" officers*- derive their authority from their commissions as peace officers. Their responsibilities and power are exactly the same as for any peace officer, and it is only by departmental policy that they are assigned to juvenile cases. *Juvenile "probation" officers*- are juvenile court workers. Their work usually begins at the time of referral by the police officer, although in many communities their work overlaps that of the police officer. The bulk of their work lies in social investigations and social casework with the juvenile offender and his family. Their authority stems from a series of "bracket laws," the first of which was enacted in 1919. Prior to 1919, juvenile probation officers were provided for permissively. The Texas Juvenile Court Act of 1907[1] provided that a delinquent child could be committed to the custody of a probation officer or any proper person. Probation officers were required to be "discreet persons of good moral character," and they were to serve without compensation.

The act of 1919[2] provided the basis for the present laws concerning probation officers. It stated that in counties of less than 75,000 population, commissioners courts might appoint a probation officer if they saw the necessity for one. In counties of more than 75,000 population, it was mandatory that the county judge appoint a minimum of two officers. The statute defined their duties and set the salaries.

This law has been amended many times, "bracket" legislation has been enacted affecting counties within certain population parameters and a number of "local" bills have been passed which affect the appointment of juvenile probation officers.

It is not possible to make a clear statement of the enabling legislation providing for juvenile probation officers. The extent of population change in Texas in recent years has been such that many counties have "out-grown" their bracket classification and are operating juvenile programs outside of the legislative framework. Legislation has not kept pace with social and population changes. Salary limitations in the bracket laws are unrealistic and are often ignored. Many counties have designed programs based upon social need rather than legislative authority. Extreme differences exist between some rural and urban counties.

Art. 5142, Texas Revised Civil Statutes Annotated, is the closest thing to a general statute on juvenile probation officers. It contains some provisions on qualifications, duties, appointment and removal.

1. Acts of the 30th Legislature, 1907, p.137,ch.65
2. Article 5142, Texas Revised Civil Statutes Annotated.

Regarding a juvenile probation officer's status as a law enforcement officer, Sec. 51.02(8) of the Family Code states that "law enforcement officer" means a peace officer as defined by Art. 2.12, Texas Code of Criminal Procedure. Art. 2.12 does not list a juvenile probation officer as peace officer. However, other statutes and court decisions make it rather clear that a juvenile probation officer has the right of a police officer or sheriff under Article 14.01, Texas Code of Criminal Procedure, to make an arrest without a warrant for any offense committed in their presence or within their view. Art.5142, Texas Revised Civil Statutes Annotated; In re S.E.B., 514 S.W.2d 948 (Tex. Civ. App.-El Paso 1974, no writ). In fact, an early Attorney General's opinion held that a juvenile officer appointed under authority of Art. 5142 has the the legal right to carry a gun while in the discharge of his official duty. TEX. ATT'Y GEN. OP. No. 0-7332 (1946).

Juvenile Boards

The guardianship functions of the State are scattered among the many district, county, and domestic relations courts. The Legislature in 1917 created for the four largest counties in the State, juvenile boards composed of ". . .the judges of the several district and criminal district courts, together with the county judges.[1]

Since 1917 numerous juvenile boards have been created, some by statutes applying to particular counties and many by general bracket legislation. "Bracket legislation" was used to create many of the early juvenile boards to avoid the constitutional restriction upon the Legislature to enact local or special laws regulating the affairs of counties. Much recent legislation creating juvenile boards specify a particular county. The statutes creating juvenile boards usually specify:

(1) Who shall serve on the board (usually the county judge and the district judges of the county).

(2) The salary members are entitled to receive-which is additional to other salaries and must be paid from the county general fund rather than the jury fund.

(3) The duties of juvenile boards which are administrative rather than judicial.

In addition, many of the statutes provide for the administrative function of the Juvenile Court, probation departments, probation and juvenile officers, and other staff along with their duties.

In the case Jones v. Alexander[2] juvenile boards were attacked on grounds that they provided for unauthorized grants of money, that they violated the prohibition of anyone's holding at one time two civil public offices, and that they did not meet the requirements for separate governmental functions. The Supreme Court ruled that these concepts did not apply and upheld the constitutionality of juvenile boards.

There is little uniformity among the many provisions for juvenile boards. It is likely that, of the boards created by bracket legislation, some are operating under obsolete laws since with each federal census, a county may fall into a different population bracket.

1. Article 5139, Texas Revised Civil Statutes Annotated.
2. 122 Tex. 328, 59 S.W.2d 1080 (1933).

SUGGESTED OFFICE POLICIES

The following are some suggested office policies for probation departments.

Appointment and Oath of Office

Suggested order of juvenile board appointing chief juvenile probation officer:

IN THE MATTER OF

APPOINTMENT OF CHIEF JUVENILE PROBATION OFFICER

OF _____ COUNTY, TEXAS

BE IT REMEMBERED THAT on the _____ the Juvenile Board of _____ County, Texas, had a regularly scheduled meeting and by unanimous vote on motion duly made and seconded appointed _____ _____, Chief Juvenile Probation Officer of _____ County, Texas for a period of time beginning _____ and ending _____ _____, which appointment was by the said_____ accepted.

IT IS THEREFORE ORDERED that said _____ should assume the duties of office after taking the oath of office.

_____
Judge of the Juvenile Court
of _____ County, Texas

Suggested form for appointment of assistant probation officers:

STATE OF TEXAS

COUNTY OF _____

I, _____, Chief Juvenile Probation Officer of _____ County, Texas do hereby appoint _____, as Assistant Probation Officer in and for _____ County for a period of time beginning _____, and ending _____, this appointment having been approved by the _____ County Juvenile Board, and he is hereby vested with all the power and authority of police officer or sheriff, incident to the office, as necessary or convenient to the performance of his/her duties as provided for by the Acts of the Legislature of the State of Texas.

Witness my hand this _____ day of _____, 19___.

_____

Each newly appointed Probation Officer will take the oath of office as prescribed by law promptly after his appointment has been approved by the Juvenile Board.

Official Oath:

I, _____, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of _____ of _____ County of the State of Texas, and will to the best of my ability preserve, protect and defend the Constitution and laws of the United States and of this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment, or the confirmation thereof. So help me God.

_____

Sworn to and subscribed before me, this _____ day of _____

_____ A.D. 19___

_____

_____

Code of Ethics

The following statement is taken from the "Declaration of Beliefs," which was adopted by the Texas Probation, Parole and Corrections Association, May 13, 1964:

. . .We Believe in the dignity and worth of every individual with whom we work, while being cognizant of man's propensity for goodness and error. We hold as self-evident the maturity potential of human nature, and believe in the individual's capacity for change. We accept the authority inherent in our profession and resolve to use that authority to protect the community and to help the individual in his or her struggle for maturity and responsible freedom.

Historically concluding that justice is best served by the individualization of treatment, we accept our responsibility to the amelioration of the administration of justice in our community, state and nation, while striving for humility and generosity in consideration of the many facets of the justice-whole.

We resolve to dedicate ourselves to the development of attitudes and skills consonant with this statement of beliefs and do hereby pledge to govern our professional behavior by this code of ethics.

. . .To abide by and uphold the laws of my community, state and nation, remembering always my duty to protect the community which I serve; share within the limits of my office, a general responsibility for making my community a better place in which to live;

To regard as my professional obligations, consistent with the public welfare, the interests of those individuals with whom I work; respect both their legal and moral rights at all times; at no time permit myself to be condescending to my client, and will in my behavior, speech, dress and all other areas adhere to my professional standards;

To assure that professional responsibility and objectivity takes a precedence over my personal convenience or biases, when not inconsistent with my obligation to my profession or the welfare of society to maintain in strict confidence any personal revelations which are given to me;

To treat the accomplishments of my colleagues with respect and express critical judgement of them only through established channels; support them always in fulfilling their responsibilities; respect differences of opinion between myself and my colleagues and take positive steps to resolve them;

To work cooperatively with all agencies in matters affecting the welfare and protection of the community; protect the confidentiality of shared information and respect the functions of all agencies;

To conduct myself, both privately and publicly, in such manner as to enhance public confidence in my profession and its objectives; neither grant nor receive favors in the performance of the duties of my office; and treat all persons with whom I have contact with courtesy and respect.

Guidelines for Relationships with Probationers and Agencies

The following guidelines should be observed by those who work in a probation department: (2) Gifts or services are not to be accepted from either probationers or victims; (b) cases are not to be discussed outside the office unless in an official capacity; (c) officers, their assistants and volunteers are not to read files, including dead files, unless directly responsible for them; (d) new personnel, until otherwise directed, should check with the officer before discussing cases with memebers of other agencies, (e) AT NO TIME IS AN ASSISTANT OR VOLUNTEER EVER TO ACT IN THE CAPACITY OF A PROBATION OFFICER. If an assistant or volunteer is representing an officer, the proper credentials should always be presented. If information is to be transmitted at the request of the officer, it should be so stated that the assistant or volunteer is acting on the directive of the officer; (f) every effort should be make to cooperate with all agencies connected with the administration of justice and other community agencies. Care should be taken to respect the confidentiality of information given to or received from any of these departments; (g) money for fines, court costs, restitution, and supervision fees for the probationer may never be accepted by the volunteer.

Officer Identification Cards and Business Cards

Each probation department develops its own identification card. The identification card generally contains the name, age, race, sex, height, weight and color of eyes of the officer. The card should be signed by the juvenile Judge. Probation Officer assistants and volunteers should be issued some type of identification card, but not necessarily the same type of card as the probation officer.

Caseload Standards

The following is excerpted from National Advisory Commission on Criminal Justice Standards and Goals: Corrections (1973), pp 318-319:

One impact of the casework model has been a standard ratio of probationers to staff. The figure of 50 cases per probation officer first appeared in the literature in 1917. It was the consensus of a group of probation administrators and was never validated. The recommendation later was modified to include investigations.

The caseload standard provides an excuse for officers with large caseloads to explain why they cannot supervise probationers effectively. It also is a valuable reference point at budget time. Probation agencies have been known to attempt to increase their staff and reduce the size of the caseload without making any effort to define what needs to be done and what tasks must be performed. Caseload reduction has become an end unto itself.

When caseloads alone have been reduced, results have been disappointing. In some cases, an increase in probation violations resulted, undoubtedly due to increased surveillance or overreation of well-meaning probation officers. Some gains were made when staff members were given special training in case management, but this appears to be the exception. The comment has been made that with caseload reduction, probation agencies have been unable to teach staff what to do with the additional time available.

The San Francisco Project described in a subsequent section challenged the assumption of a caseload standard. Four levels of workloads were established: (1) ideal (50 cases); (2) intensive (25, i.e., half the ideal); (3) normal (100, twice the ideal); and (4) minimum supervision (with a ceiling of 250 cases). Persons in minimum supervision caseloads were required only to submit a monthly written report; no contacts occurred except when requested by the probationer. It was found that offenders in minimum caseloads performed as well as those under normal supervision. The minimum and ideal caseloads had almost identical violation rates. In the intensive caseloads, the violation rate did not decline, but technical violations increased.

The study indicated that the number of contacts between probationer and staff appeared to have little relationship to success or failure on probation. The conclusion was that the concept of a caseload is meaningless without some type of classification and matching of offender type, service to be offered, and staff.(1)

But the caseload standard remained unchanged until the President's Commission on Law Enforcement and Administration of Justice (the Crime Commission) recommended in 1967 a significant but sometimes overlooked change by virtue of the phrase "on the basis of average ratio of 35 offenders per officer."(2) The change was to a ratio for staffing, not a formula for caseload.

Agencies are now considering workloads, not caseloads, to determine staff requirements. Specific tasks are identified, measured for time required to accomplish the task, and translated into number of staff members needed.

1. James Robison et al., *The San Francisco Project*, Research Report No. 14 (Berkeley: University of California School of Criminology, 1969).
2. President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (Washington: Government Printing Office, 1967).p.169

INTERVIEWING

General Principles of the Interview

An interview is a serious conversation, a purposeful and directed discussion. When people converse, there is an interplay of ideas, feelings and attitudes. The interview is used to secure information. However, if probation officers go no further than to use the interview as a means of gaining objective data, they may miss the fundamental purpose of probation, i.e. influencing, motivating, and treating probationers.

The interview is not limited to spoken words between people, but includes the use of observational abilities and diagnostic skills in nonverbal areas as well. Gestures, tone of voice, inflection of speech, facial expression and all other forms of human expression may be of equal or greater value to the probation officer than the spoken word.

Probation officers must recognize the fact that they are human beings who possess all the frailties, shortcomings and weaknesses common to all individuals. The officer brings to the interview situation conscious as well as unconscious motivations, ambivalences, biases, prejudices, and objective and subjective reasons for behavior. Predetermined attitudes frequently interfere with the officer's ability to build a constructive relationship with the probationer. The mature, well-adjusted probation officer will acknowledge the existence of these feelings and do everything possible to overcome them in order to become a more effective interviewer.

The probationer also brings to the interview situation feelings, attitudes, fears, apprehensions, uncertainties, and confusion, concerning probation and the probation officer. Many juveniles are experts in the art of "conning" interviewers and telling them what they want to hear.

The interview is most important in the performance of probation supervision. In studying human beings and their relationships, much of the necessary data can be obtained only through the use of the interview. Practically all the duties and responsibilities of the probation officer involve interviewing or working in areas related to interviewing. The officer is regularly interviewing probationers or other persons regarding probationers, and evaluating and recording the results of such interviews. Since knowledge of human relationships is so essential, the officer must try by every means possible to improve the interview as a data gathering technique. Skill in interviewing can best be improved through practice, but only when practice is accompanied by knowledge about interviewing and self-conscious study of one's own practices.

Types of Interviews

In general there are two types of interviews, guided and unguided. Alternate titles are directed and nondirected, patterned and unpatterned. In the guided interview, a list of questions or blanks is prepared, based on the nature of the information being sought. For the untrained interviewer this is of great assistance. As interviewing skills are developed, the probation officer usually discards this and uses other techniques.

The unguided interview is used in situations such as counseling and dealing with complaints. This requires a high degree of skill if the objectives of the interview are to be accomplished. The theory of the unguided interview is that the subject will reveal more about feelings, desires, and problems through a more informal approach to the interviewing process.

Principles of Interviewing

Preparation

(a) Determine the specific objectives of the interview and keep the interview in line with the objectives.

(b) Determine the method of accomplishing the objectives. Decide whether to use the guided or unguided approach.

(c) Inform yourself as much as possible concerning the individual you are to interview. Acquaint yourself with the contents of the case file prior to the interview in order that it will not be necessary to constantly refer to it during the interview.

Setting

Physical Setting: Probation work requires that interviews be held in the office, the probationer's home, detention center, streets, etc. The right place for an interview depends on many factors and conditions, but it should always be conducted where maximum benefits will be obtained based on the needs of the child.

The physical setting should be as comfortable, attractive, and private as possible. It is difficult to conduct an interview in a room full of people or while standing at an office rail. The more comfortable and relaxed a person is, the freer the conversation.

Mental Setting. An initial effort should be made by the interviewer to establish the atmosphere of ease. This can be done by idle conversation rather than diving into the business.

Conducting the Interview. The initial contact is a vital event in the process of intake or probation supervision. On its handling may depend the success of probation. It is here that the officer can gain the information desired and supply the facts the child needs or wants to know. The child should be told the purpose of the interview and that full cooperation is necessary. The child should be made aware of the functions of the probation department, the probationer-probation officer relationship, and should be given a realistic concept of the officer's responsibility and obligation both to the child and society. The probation officer, in explaining this to the child, must move with the child at a pace that the child can travel, to assure that full understanding takes place. Frequently such topics are explained faster than the child can handle.

The interviewer should possess and demonstrate a basic liking and respect for people. This principle is considered by some to be the most fundamental in interviewing. The interviewer who likes to talk with people and shows an interest in them will find out the most about them. The probation officer should always be frank and honest in dealing with the child. To do so otherwise would destroy any chances the probation officer might have in working with the child. To understand the child, the officer must have the ability to assume the role of the client and see things from the client's perspective.

Questions should be asked in a manner that encourages the child to talk. Questions that require a yes or no answer will not accomplish this. The child should be encouraged to do most of the talking. Silence almost always implies a request for more information, and the child will usually continue to supply it. Restatement of thoughts presented by the child is the basic technique of keeping the conversation going. In a good interview, the interviewer is successful in getting the interviewee to talk freely and reveal real thoughts and feelings.

To listen attentively is essential to effective interviewing. Marginal listening not only hinders the interview, but is insulting to the child. The probation officer should possess a level of awareness to keep in control of the interview situation at all times. The maturity and stability of the officer should be evident in the manner in which the interview is conducted, and in the decisions made in evaluating the child.

As long as the child keeps within reasonable limits, free expression should be permitted and encouraged. The probation officer has the responsibility of guiding the interview so as to obtain the maximum benefit for both the child and the department, but this does not imply domination of the conversation. In directing the interview, the probation officer must be careful not to permit the child to place total responsibility upon the officer for planning and decisions. The child must participate as fully as possible in making plans and decisions since the child is the person who must carry them out. The officer can best help by assisting the child in an analysis of the problem and in developing a plan of action.

There are a number of established principles that will help the probation officer in leading and directing the interview:

(a) Allow the child to talk freely about subjects which have strong feelings associated with them. In such instances, the emotional release can be extremely therapeutic and may be regarded as a sign of confidence in the officer.

(b) Do not attempt to bring about planning or decisions during or immediately following an emotional upset. When possible, avoid terminating an interview with the child left in an agitated or highly emotional state.

(c) Avoid unnecessary argument or contradiction. This can be done by changing the subject or routing the interview into other channels.

(d) As far as possible, anticipate objections and answer them directly.

(e) Give recognition by expressing approval of the child's actual accomplishments or stated resolutions or ambitions. (Don't be conned, however).

(f) In reacting to the person being interviewed, be careful to distinquish between friendliness and sympathetic understanding and the assumption of a patronizing attitude.

(g) Be prepared to give genuine assurance where possible. Some officers mistakenly give expressions of reassurance when they have no knowledge or understanding of the child's problems.

(h) At the termination of the interview, review with the child the major areas of discussion, points agreed upon, and problems needing further exploration. This will lay the groundwork for the next interview. All interviews should end with a statement as to when the child will be seen again officially and for what purpose.

Recording the Interview. Note-taking during an interview distracts the attention of the interviewer and the interviewee. It may prevent the officer from observing significant physical reactions of the child to various questions asked by the officer. In some instances it may cause the person being interviewed to be wary of the information furnished to the interviewer. Therefore, note-taking should be held to a minimum, except for the recording of names, addresses, dates, etc. Other information obtained should be recorded immediately upon the departure of the child.

Summary

Real change in the child's attitudes and values must come from within the individual. The probation officer must realize that the best method of bringing about a modification in the conduct of a child is for the child to gain an insight into the origin of problems. The officer may help the child discover problems and bring about a change in conduct by exploring alternative attitudes and values. However, using the interview to "preach" to the child is not likely to bring about change. Likewise, ordering or forbidding a particular type of behavior to the child also produces little results. If the child can be helped to understand the consequences involved in various patterns of conduct, it is more likely that responsible decisions will be made. This can be accomplished in a good interview, or possibly several interviews of a meaningful nature.

CHILD'S RIGHT TO TREATMENT
(From: Law and Tactics in Juvenile Cases, National Juvenile Law Center, St. Louis, Mo. 1974)

Introduction

In the past decade, courts have begun to give judicial recognition to a new right-the right to treatment. Originally conceived as a right of the mentally ill, the right to treatment has also been recognized in cases involving commitments of tubercular patients, persons found not guilty by reason of insanity, sexual psychopaths, and defective delinquents. To a much lesser extent, given the competing concerns of punishment of the individual and protection of society, a right to treatment has begun to be considered in regard to those convicted of a crime. Although both the nature and basis of the right and the scope of judicial intervention to secure it are not yet fully defined, the concept of a right to treatment has important implications for the juvenile court system, whose promise of treatment is frequently not fulfilled in practice.

Perhaps the first articulation of the need for the courts to recognize a right to treatment appeared in Birnbaum, *The Right to Treatment*, 46 A.B.A.J. 499 (1960). Concerned by the lack of psychotherapy afforded mental patients committed to state hospitals for the ostensible purpose of treatment, Dr. Birnbaum argued that this problem was capable of legal solution. The article proposed:

> . . .that the courts under their traditional powers to protect the constitutional rights of our citizens begin to consider the problem of whether or not a person who has been institutionalized solely because he is sufficiently mentally ill to require institutionalization for care and treatment actually does receive adequate medical treatment so that he may regain the health, and therefore his liberty, as soon as possible; that the courts do this by means of recognizing and enforcing the right to treatment; and that the courts do this, independent of any action by any legislature, as a necessary and overdue development of our present concept of due process of law. (46 A.B.A.J. at 503)

Basing the argument for recognition of a right to treatment on the ground that "substantive due process of law does not allow a mentally ill person who has committed no crime to be deprived of his liberty by indefinitely institutionalizing him in a mental prison." The article concluded that a remedy should be available in habeas corpus to test the legality of a confinement in view of the adequacy of treatment.

The call for recognition of the right to treatment met a speedy and favorable reception. Only six years later, in what has become a leading case on the subject, the United States Court of Appeals for the District of Columbia in *Rouse v. Cameron*, 373 F.2d 451 (D.C. Cir. 1966), held that a person involuntarily committed to a mental hospital "has a right to treatment that is cognizable in habeas corpus." Although ultimately decided on statutory grounds, *Rouse* suggests the major constitutional arguments that may be made in support of a right to treatment: questions of procedural and substantive due process, equal protection, and cruel and unusual punishment. In the first place, where commitment to an institution is made in a proceeding lacking full procedural safeguards, it may be argued that the lack of procedural rights can be justified only by therapeutic treatment. In *Rouse* the procedural due process contentions took on further significance, for Rouse was automatically committed upon the finding of not guilty by reason of insanity without any separate inquiry into his present sanity. Lack of improvement, the court therefore stated,

> . . .raises a question of procedural due process where the commitment is. . . (criminal) rather than under the civil commitment statute, for under. . .(the former) commitment is summary, in contrast with civil commitment safeguards. It does not rest on any finding of present insanity and dangerousness but, on the contrary, on a jury's reasonable doubt that the defendant was sane when he committed the act charged. Commitment on this basis is permissible because of its humane therapeutic goals. (373 F.2d at 453)

Secondly, issues of both substantive due process and equal protection may be raised when an individual who has been institutionalized for an indefinite term for purportedly therapeutic purposes is in reality given no therapy. Where a person who has not been found guilty of a crime is committed to an institution, the *quid pro quo* for the deprivation of liberty must be treatment. Had Rouse been found criminally responsible,

> . . .he could have been confined a year, at most, however dangerous he might have been. He has been confined for four years and the end is not in sight. Since this difference rests only on need for treatment, a failure to supply treatment may raise a question of due process of law. It has also been suggested that a failure to supply treatment may violate the equal protection clause. (373 F.2d at 453)

Finally a failure to treat may pose the question of whether the confinement does, in fact, amount to cruel and unusual punishment. In *Rouse* the court speculated that such indeterminate confinement "without treatment of one who has been found not criminally responsible may be so inhumane as to be 'cruel and unusual punishment.'" 373 F.2d at 453

Statutory Sources

In *Creek v. Stone*, 379 F.2d 106 (D.C. Cir. 1967), a juvenile, placed in a detention home prior to adjudication, alleged that the home did not have facilities for psychiatric care, of which he was in need. In analyzing the language of the juvenile court act, the court found that:

> [The] purpose stated in 16 D.C. Code section 2316(3)- to give the juvenile the care "as nearly as possible" equivalent to that which should have been given by his parents- establishes not only an important policy objective, but, in an appropriate case, a legal right to a custody that is not inconsistent with the parents patriae premise of the law. [379 F.2d at 111]

The trial court was ordered to inquire into whether the juvenile was being treated in accordance with the statutory criterion.

In *In re Elmore*, 382 F.2d 125 (D.C. Cir. 1967), a juvenile, placed in an institution with a recommendation that he receive psychiatric care, alleged that he was receiving no psychiatric treatment and that the judge did not fully explore the possible alternatives to commitment. Noting that *Creek* controlled, the court held that the juvenile's allegations obligated the trial court to inquire into what disposition would best meet the juvenile's needs.

The right to treatment is grounded in the "custody, care, and discipline" language of Ind. Stat. section 31-5-7-1 (1971). *Nelson v. Heyne*, 355 F. Supp. 451 (N.D. Ind. 1973), affirmed, 491 F.2d 352 (7th Cir. 1974). In a significant footnote, the court observed that, since a right to treatment is guaranteed by the federal constitution, any interpretation of the Indiana Juvenile Court Act that found no right to treatment in its language would itself be unconstitutional. 491 F.2d at 360, n.12.

Similarly in *Morales V. Turman*, 364 F. Supp. 166, 174 (E.D. Tex. 1973), the right to treatment was found in Tex. Rev. Stat., Art. 5143d, section 1 (1971), which requires the Texas Youth Council to provide". . .a program of constructive training aimed at rehabilitation and reestablishment in society of children adjudged delinquent."

Due Process Arguments

Procedural and substantive due process, guaranteed by the Fourteenth Amendment to the U. S. Constitution, are two sources of the right to treatment for the noncriminally committed. Though the two sources are often blurred in the judicial decisions, the reasoning of one is distinguishable from that of the other. Procedural due process demands that, when a person is confined as a result of a proceeding that does not possess all the procedural guarantees of a criminal prosecution, the only justification for the lack of procedural safeguards is treatment. Substantive due process, on the

other hand, demands that even if full procedural rights have been accorded, the only justification for the deprivation of liberty of a person who has not been convicted of a crime is treatment. The absence of treatment, then, is a violation of due process, procedural or substantive. An important corollary is that the nature and duration of commitment be reasonably related to its purpose.

The right to treatment for the mentally ill was found to be constitutionally required by procedural and substantive due process in *Wyatt v. Stickney*, 325 F. Supp. 781 (M.D. Ala, 1971). Where patients are involuntarily committed for treatment purposes through noncriminal proceedings without the constitutional protection afforded defendants in criminal proceedings, the court held that the patients:

> . . .unquestionably have a constitutional right to receive such individual treatment as will give each of them a realistic opportunity to be cured or to improve his or her mental condition. . .The purpose of involuntary hospitalization for treatment purposes is *treatment* and not mere custodial care or punishment. This is the only justification, from a constitutional standpoint, that allows civil commitments to mental institutions. . .There can be no legal (or moral) justification for. . .failing to afford treatment. . . To deprive any citizen of his or her liberty upon the altruistic theory that the confinement is for humane therapeutic reasons and then fail to provide adequate treatment violates the very fundamentals of due process. [324 F. Supp. at 784, 785]

The same court has recognized and enforced, on the same grounds, a constitutional right to "habilitation" for the mentally retarded. *Wyatt v. Stickney*, 344 F. Supp. 387 (M.D. Ala. 1972).

A right to treatment for the mentally retarded was found to be required by substantive due process in *Welsch v. Likins*, 373 F. Supp. 487 (D. Minn. 1974). Though the court found the right in the Fourteenth Amendment, the court relied upon *Robinson v. California*, 370 U. S. 660 (1962). Extending *Robinson* to various kinds of noncriminal incarceration based on status, and claiming that the mentally retarded are "victims of uncontrollable status," the court concluded that when the mentally retarded are confined without treatment, they come within the protection of *Robinson*.

> [B]ecause plaintiffs have not been guilty of any criminal offenses against society, treatment is the only constitutionally permissable purpose of their confinement, regardless of procedural protections under the governing civil commitment statute. [373 F. Supp. at 496]

In *Welsch*, the court also found a due process right to the least restrictive alternative. This right obligates those persons, charged with the care of the mentally retarded, to "seek out and develop community-based facilities," in which the mentally retarded can be treated. Hospitalization is to be a last resort for the mentally ill. See also: *Covington v. Harris*, 419 F.2d 617 (D.C. Cir. 1969); *Lake v. Cameron*, 364 F.2d 657 (D.C. Cir. 1966).

Burnham v. Department of Public Health of the State of Georgia, 349 F. Supp. 1335 (N.D. Ga. 1972), is authority, however for due process *not* requiring a right to treatment for the mentally ill. *Burnham* distinquishes both *Wyatt* and *Rouse*, discussed above. In *Burnham*, *Rouse* is said to be a decision based on the applicable statute and that its discussion of constitutional issues is *dictum*. Citing education as an example of the rule that not every governmental function is an individual right, and finding no federal statute mandating treatment as in *Rouse*, *Burnham* finds no constitutionally protected right to treatment. *Burnham* also relies upon Justice Burger's dissent in *Lake v. Cameron*, 364 F.2d 657 (D.C. Cir. 1966), expressing a reluctance to extend a right to treatment to include a judicial evaluation of alternative course of treatment:

> [T]his Court now orders the District Court to perform functions normally reserved to social agencies by commanding search for a judicially approved course of treatment or custodial care for this mentally ill person who is plainly unable to care for herself. Neither this Court nor the District Court is equipped to carry out the broad geriatric inquiry proposed or to resolve the social and economic issues involved. [364 F.2d at 663]

Burnham distinguishes *Wyatt* in two ways. First, it claims *Wyatt* relied too heavily on *Rouse*, a statutory decision. Second, it notes the difference in legislative funding of the Georgia and Alabama mental health institutions. In Alabama the legislature had made budget cuts, whereas in Georgia the legislature was found to have increased the mental health budget $77 million in the past twelve years.

New York State Association for Retarded Children v. Rockefeller, 357 F. Supp. 752 (S.D.N.Y. 1973), is authority for due process *not* requiring a right to treatment for the mentally retarded. It also distinquishes both *Rouse* and *Wyatt*.

Believing it was inappropriate to compare the mandatory commitment of those found not guilty by reason of insanity to the mentally retarded, a high percentage of whom are admitted voluntarily, the *Rockefeller* court observed at 759-760:

> The proposition that the *quid pro quo* for commitment in lieu of criminal incarceration must be treatment is not really radical. Expanding that proposition, however, to a constitutional right of habilitation. . .to mentally retarded children. . .is more than the next logical step in an inexorable sequence. At the outset, there is a difference in the nature of commitment. In *Rouse*, the commitment of persons acquitted by reason of insanity was not only involuntary but mandatory. On the other hand, a large part of the [mentally retarded] entered because they had no alternative, and none have been denied a right to release. There is a significant difference between the state requiring commitment as an alternative to criminal incarceration and the state providing a residence for the mentally retarded. The [mentally retarded] are for the most part incapable of existing independently unless successfully habilitated.

Since, for the mentally retarded, release is allowed but, as a practical matter, impossible, the *Rouse* equation of treatment or release was thought inapplicable. 357 F. Supp. at 761. This argument, however, is not relevant to juveniles. Mentally competent juveniles are not usually voluntarily confined in institutions. Release is not available at their option. They are not incapable of successfully functioning in society without first undergoing treatment.

Rouse was further distinquished on ground of federalism. While a federal statute applicable to the operation of a federal hospital was involved in *Rouse*, the federal district court in *Rockefeller* did not wish to "radically reconstruct" the state's treatment of the mentally retarded. 357 F. Supp. at 760.

Rockefeller distinquishes *Wyatt* on the basis of the *Wyatt* defendant's failure to contest the allegations of inadequate treatment. The court explains *Wyatt* as a joint effort on the part of the mentally retarded patients and the state officials charged with their care to squeeze additional appropriations out of the legislature.

Although a constitutionally protected right to treatment was not found, the *Rockefeller* court did go on to find that due process does encompass a right to protection from harm, which is, in effect, a limited right to treatment. Noting that the purpose of the state mental health statutes is treatment, the district court suggested that the fulfillment of this purpose could be achieved in the state courts, and that a federal court could at most only order the release of those held involuntarily or order compliance with statutorily established, minimally acceptable conditions of confinement.

> Residents. . .and their parents or guardians may be entitled to enforce the fulfillment of this purpose in the state courts. In a federal court, the holding should be that failure to accomplish the original purpose gives only a right to release or to what anyone is entitled to receive when confined in a state institution. [357 F. Supp. at 762]

Judicial decisions, involving various classes of persons noncriminally committed, suggest that a prison is an inappropriate place of confinement for the noncriminally committed and that the actual administration of treatment is necessary to justify the lack of full procedural safeguards. In *Commonwealth v. Page*, 159 N.E.2d 82 (Mass. 1959), a sexual psychopath was committed to the treatment center in a prison. The court found that no treatment center had actually been established. "[I]t is necessary that the remedial aspect of confinement. . .have foundation in fact. . .[W]e hold that a confinement in a prison which is undifferentiated from the incarceration of convicted criminals is not remedial so as to escape constitutional requirements of due process." 159 N.E.2d at 85. *Commonwealth v. Hogan*, 170 N.E.2d 327 (Mich. 1960), on the other hand, held the treatment center to be sufficiently remedial in fact.

The court in *Sas v. Maryland*, 334 F.2d 506, 509 (4th Cir. 1964), a case involving the commitment of a defective delinquent to a mental hospital, posed two questions to be considered on remand: First, "[W]hether the proposed objectives of the Act are sufficiently implemented in its actual administration to support its categorization as a civil procedure and justify the elimination of conventional criminal procedural safeguards." Second, "[W]hether [the hospital] does in fact furnish treatment for treatable defective delinquents as distinquished from other lawbreakers which would

support the Act under the equal protection clause. . ." *Tippet v. Maryland*, 436 F.2d 1153 (4th Cir. 1971), held the implementation of the Defective Delinquent Act sufficient to afford due process and treatment. Accord, *Director Of Patuxent Institution v. Daniels*, 243 Md. 16, 221 A.2d 397 (1966). The court held in *In re Maddox*, 88 N.W.2d 470, 477 (Mich. 1958), that a sexual psychopath's confinement in a prison was inappropriate and that ". . .his right to proper medical treatment would have been as badly violated by his imprisonment as his constitutional rights." In *People v. Shiro*, 52, Ill.2d 279, 287 N.E.2d 708 (1972), the court held that a sexually dangerous person, originally committed to a hospital but transferred to a prison, was entitled to a hearing on whether he was being given "care and treatment. . .designed to effect recovery" in a facility "set aside for care and treatment." In *Maatallah v. Warden Nevada State Prison*, 470 P.2d 122 (Nev. 1970), the court held that a person found incompetent to stand trial, originally committed to a hospital but transferred to a prison, was entitled to a hearing on whether he was "detained without treatment." The court suggested that, if he was, there would be due process, equal protection, and cruel and unusual punishment problems. Fifth and Sixth Amendment problems would arise if a statute authorizing the detention of persons endangering the public health was construed to allow detention of a tubercular person in the hospital wing of a jail. *Benton v. Reid*, 231 V.2d 780 (D.C. Cir. 1956).

One judicial decision suggests that the actual administration of treatment is necessary to justify the deprivation of liberty of the mentally ill. The court in *Nason v. Superintendent of Bridgewater State Hospital*, 233 N.E.2d 908 (Mass. 1968), speculated that "[c]onfinement of mentally ill persons, not found guilty of crime, without affording them reasonable treatment also raises serious questions of deprivation of liberty without due process of law." 233 N.E.2d at 913. The court ordered a treatment program to be devised by competent doctors and held that, if treatment was not provided within a reasonable time, the legality of further confinement could be determined.

The United States Supreme Court in *Jackson v. Indiana*, 406 U.S. 715, 738 (1972), stated that ". . .due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed." The Court held that it was a denial of due process and equal protection for a person to be automatically committed for an indefinite term upon a finding of incompetency to stand trial. Due process required that the defendant be confined only for a reasonable time within which the probability of regaining his competency would be determined. If that probability is negligible, he is entitled to be released or have civil commitment proceedings initiated against him. Accord, *In re Davis*, 8 Cal.3d 798, 505 P.2d 1018, 106 Cal. Rptr. 178 (1973); *People ex rel. Anonymous v. Waugh*, 351 N.Y.S.2d 594 (Sup. Ct. 1974); *People v. Anonymous*, 351 N.Y.S.2d 869 (Sup. Ct. 1974). Accord, but on equal protection grounds for sexual psychopaths committed in lieu of sentencing, *Humphrey v. Cady*, 405 U.S.504 (1972); for defendants found not guilty by reason of insanity, *Bolton v. Harris*, 383 F.2d 519 (D.C. Cir. 1967).

The due process requirement that the nature and duration of confinement be reasonably related to the purpose of confinement is being used to hold unconstitutional the transfer of mental patients to prisons. The court in *Kesselbrenner v. Annonymous*, 305 N.E.2d 903, 350 N.Y.S.2d 889 (1973), used this requirement to hold unconstitutional the transfer of a mental patient to a prison hosptial for security reasons.

> [C]onfinement is necessary for the protection of others but, to be constitutional, it must be therapeutic, not punitive. . .Only confinement in a hospital. . . is suitable; incarceration in a penal, security-oriented facility. . .would be wholly incompatible with, indeed destructive of, this purpose. (305 N.E.2d at 905]

This due process requirement likewise is being used to limit the permissible length of confinement for observation. In *McNeil v. Director, Patuxent Institution*, 407 U.S. 245 (1972), petitioner, sentenced to five years imprisonment, but who was subsequently sent to a hosptial for an examination to determine if he should be committed for an indefinite term as a defective delinquent, and who stubbornly refused to cooperate for six years so that the examination was never completed, was ordered released.

In a highly significant case, *Inmates of Boys' Training School v. Affleck*, 346 F. Supp. 1354 (D.R.I. 1972), the court concludes, from an analysis of the Supreme Court decisions of *In re Gault*, 387 U.S. 1 (1967), and *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971), that the right to treatment for juveniles is constitutionally required by procedural due process. Since due process is applicable to juvenile court proceedings, but does not require a jury trial at delinquency adjudications, *Affleck* deduces that:

> . . .the constitutional validity of present procedural safeguards in juvenile adjudications, which do not embrace all of the rigorous safeguards of criminal

> court adjudications, appears to rest on the adherence of the juvenile justice system to rehabilitative rather than penal goals. [346 F. Supp. at 1364]

Based on this assumption, procedural due process demands that a right to treatment for juveniles be the *quid pro quo* for the lack of complete procedural safeguards.

> Rehabilitation, then, is the interest which the state has defined as being the purpose of confinement of juveniles. Due process in the adjudicative stages of the juvenile justice system has been defined differently from due process in the criminal justice system because of the juvenile system, rehabilitation, differs from the goals of the criminal system, which include punishment, deterrence and retribution. Thus due process in the juvenile justice system requires that the post-adjudicative state of institutionalization further the goal of rehabilitation. [346 F. supp. at 1364]

However, another well reasoned federal district court decision, which follows a similar analysis in concluding that it was a denial of procedural due process to confine a juvenile, who had been denied a jury trial, in prison without rehabilitative treatment, has been reversed. *United States ex rel. Murray v. Owens*, 341 F. Supp. 722 (S.D.N.Y. 1972), *reversed*, 465 F.2d 289 (2d Cir. 1972). Relying heavily upon an analysis of *McKeiver, supra*, the district court observed, 341 F. Supp. at 726-727:

> Mr. Justice Blackman emphasized in *McKeiver* the benevolence of the juvenile court system, justifying the informality of the input and adjudicative procedures by the resulting effort at rehabilitation. The effort at *rehabilitation*, in my opinion, lay at the heart of the decision and essentially justified exclusion of the juvenile from the safeguards of *Duncan*. . .If the dispositional end of procedure is to jail the child with more mature criminals, under a relatively substantial sentence, then to what avail is the destruction of constitutional safeguards?

In reversing, the court of appeals, while agreeing that the result in *McKeiver* was influenced by the goal of rehabilitation, was of the opinion that the Supreme Court's decisions countenanced other aspects of the juvenile justice system as well:

> The advantages sought by the juvenile system do not begin and end with the treatment considered appropriate once an adjudication of delinquency has been reached: they include "the idealistic prospect of an intimate, informal protective proceeding". . .and, we should add, one which disposes of the issues promptly and without all the time-consuming procedures which accompany trial by jury. [465 F.2d at 292]

Significantly *Murray* did not involve the right of juveniles to receive treatment and is only one of many cases to debate the question of whether it is a denial of procedural due process to confine a juvenile in a prison without according him all of the procedural protections normally accorded a defendant in a criminal case. *White v. Reid*, 125 F. Supp. 647 (D.D.C. 1954), is the first case to hold that the confinement of a juvenile in a prison is a denial of procedural due process. Holding that the confinement of the juvenile in the D.C. jail for a parole violation was unlawful, since he was denied the procedural rights guaranteed to a criminal defendant by the Fifth and Sixth Amendments, the court observed at 650:

> Unless the institution is one whose primary concern is the individual's moral and physical well-being, unless its facilities are intended for and adapted to guidance, care, education, and training rather than punishment, unless its supervision is that of a guardian, not that of a prison guard or jailor, it seems clear that a commitment to such institution is by reason of conviction of crime and cannot withstand an assault for violation of Constitutional safeguards.

If a juvenile is sent to a penitentiary where prisoners are held, he should have been given constitutional safeguards. In accord, *Baker v. Hamilton*, 345 F. Supp. 345 (W.D. Ky. 1972); *Kautter v. Reid*, 183 F. Supp. 352 (D.D.C. 1960); *United States ex rel. Stinnet v. Hegstrom*, 178 F. Supp. 17 (D. Conn. 1959); *State ex rel. Londerholm v. Owens*, 416 P.2d 259 (Kan. 1966); *In re Rich*, 216 A.2d 266 (Vt. 1966); *Boone v. Danforth*, 463 S.W.2d 825 (Mo. 1971). Other cases have held that it is not a violation of procedural due process to confine a juvenile in a prison or jail: *Sonnenberg v. Markley*, 289 F.2d 126 (7th Cir. 1961); *Arkadiele v. Markley*, 186 F. Supp. 586 (S.D. Ind. 1960); *Clay v. Reid*, 173 F. Supp. 667 (D.D.C. 1959); *Suarez v. Wilkinson*, 133 F. Supp. 38 (M.D. Pa. 1955); *Wilson v. Coughlin*, 147 N.W.2d 175 (Iowa 1966); *In re Garrett*, 346 N.Y.S.2d 651 (Fam. Ct. 1973); *Long v. Langlois*, 170 A.2d 618 (R.I. 1961): *Harwood v. State ex rel. Pillars*, 201 S.W.2d 672 (Tenn. 1947).

In re Teesmilles, 265 N.E.2d 308 (Ohio App. 1970), held that, if a juvenile is confined in the same place as adult prisoners or for training and rehabilitation and is not receiving it, the courts should not affect an otherwise valid commitment, but allow the administrative agencies to handle it. On the other hand, *O-H- V. French*, 504 S.W.2d 269 (Mo. App. 1973), held that, although the constitution does not prohibit a juvenile from being transferred to an adult facility, if he is not sufficiently segregated from adult inmates or if he is not given a specially prepared program of treatment appropriate to his needs, a habeas writ will issue.

In a significant state trial court decision, *State ex rel. Harris v. Erickson*, No. 411-698 (Milwaukee County Cir. Ct. December 21, 1973), due process was found to require that post-adjudicative detainees (including delinquent as well as CINS, neglected, and dependent) be confined in a shelter care facility, pending their placement in an appropriate setting, rather than in the juvenile court detention center. The difference between the two facilities lay in their ability to provide treatment.

> Does the detention center provide an equivalent in care treatment and security that is found in the shelter care facility? Obviously, they are different. They are established for different purposes, and they operate in different ways. . .[The detention center] does not provide programs of care and treatment for children. . .What is it? It is a special jail for children who have been brought to the facility on charges of delinquency and are required to remain after the trial judge determines that the child is a danger to himself or others or is likely to run away. [*Harris*, at 4-5]

Such confinement could not even be justified by the best interests of the child.

> [T]he Court is of the opinion that the incarceration of children in a security institution is a violation of fundamental constitutional rights and cannot be justified on the ground that it is in the best interests of the child. [*Harris*, at 8]

In *Martarella v. Kelley*, 349 F. Supp. 575 (S.D.N.Y. 1972), both the court and the litigants agreed that juvenile had a substantive due process right to treatment:

> In sum, the law has developed to a point which justifies the assertion that: "A new concept of substantive due process is evolving in the therapeutic realm. The concept is founded upon a recognition of the concurrency between the state's exercise of sanctioning powers and its assumption of the duties of social responsibility. Its implication is that effective treatment must be the *quid pro quo* for society's right to exercise its *parens patriae* controls. Whether specifically recognized by statutory enactment or implicitly derived from the constitutional requirements of due process, the right to treatment exists." [349 F. Supp. at 600 quoting Kittrie, *Can the Right to Treatment Remedy the Ills of the Juvenile Process*, in *A Symposium- The Right to Treatment*, 57 Geo. L.J. 848, 870 (1969)]

Morales v. Turman, 364 F. Supp. 166 (E.D. Tex. 1973), held that procedural due process requires a right to treatment for juveniles.

> [T]he commitment of juveniles to institutions under conditions and procedures much less rigorous than those required for the conviction and imprisonment of an adult offender gives rise to certain limitations upon the conditions under which the state may confine the juveniles. This doctrine has been labelled the "right to treatment," and finds it basis in the due process clause of the fourteenth amendment. [364 F. Supp. at 175]

In *Nelson v. Heyne*, 491 F.2d 352 (7th Cir. 1974), the court ruled that the right to treatment for juveniles is constitutionally required by the due process clause of the Fourteenth Amendment.

Finally, it should be noted that procedural due process is not a firm base upon which to build a constitutional right to treatment, for adequate procedural safeguards accompanying the commitment process will preclude an attack upon the confinement itself or the conditions of the confinement. This is not to say however, that the need for procedural due process should be minimized. Indeed, procedural fairness may itself be a prerequisite to therapeutic treatment of the juvenile. In order for juveniles to be rehabilitated they must be, and realize they are, treated fairly.

Equal Protection Arguments

Equal protection of the law, guaranteed by the Fourteenth Amendment to the U. S. Constitution, is another source of the right to treatment for the noncriminally committed. Several different arguments can be made on this basis. (1) Commitment of a juvenile *without providing treatment* violates equal protection where the commitment is indeterminate and the juvenile may remain in an institution longer than an adult convicted of the same offense; and (2) Equal protection requires that physical and financial resources and personnel in "treatment" institutions not be widely disparate--if so, an inmate in the inferior institution is denied equal protection of the law.

The noncriminally committed are sentenced to indefinite terms, lasting until a cure is effected in the case of the mentally ill or until age 21 (most states) in the case of juveniles. An indefinite term often results in confinement in excess of the maximum possible length of confinement under a criminal sentence. As a result, there is often a disparity between the maximum length of confinement of juveniles and that of adults who have committed the same offense. This disparity is itself not a denial of equal protection. The indeterminate disposition is said to be necessary to accomplish rehabilitation. See, *Smith v. State*, 444 S.W.2d 941, 945 (Tex. Civ. App. 1969):

> Since the purpose of the legislation is to salvage youthful offenders, it requires no straining of the judicial imagination to find the existence of a reasonable relationship between the legislative purpose and the use of age as the classifying trait. . .The Legislature could reasonably have concluded that children as a class, should be subject to indefinite periods of confinement, not to extend beyond their twenty-first birthday, in order to insure sufficient time to accord the child sufficient treatment of the type required for his effective rehabilitation.

Accord, *In re Tyler*, 262 So.2d 815 (La. App. 1972). *Smith* also concluded that classifications based on age were not suspect, so that the compelling interest test was not applicable, and that the juvenile's contention that he was not being given treatment was not worthy of consideration in the absence of evidence to that effect.

On the other hand, it has been suggested repeatedly that noncriminal confinement for an offense, for a longer period of time than criminally required, may be a violation of equal protection if no treatment is provided. For example, the court in *In re Wilson*, 264 A.2d 614, 618 (Pa. 1970), speculated that confinement of a juvenile for a longer period of time than an adult, who committed the same offense, was permissible only if it is ". . .clear that the longer commitment will result in the juvenile's receiving appropriate rehabilitative care. . ." However, this view was rejected in *In re K.V.N.*, 283 A.2d 337 (N.J. Super. 1971). Therein, the juvenile argued that since he was confined with adults in the same institution and receiving the same treatment, there was no rational basis for his indeterminate sentence. The court rejected this argument with a paucity of explanation. "The fact that juveniles and adults may be treated the same in the Correctional Institution does not indicate that the classification of juveniles in respect to sentencing is without a reasonable nexus . . .[T]he classification is related to the state's interest in rehabilitating its citizens." 283 A.2d at 345.

In *United States ex rel. Sero v. Preiser*, 372 F. Supp. 663 (S.D.N.Y. 1974), the court considered indefinite reformatory terms to which "reformable" youthful offenders are sentenced. Relying on *Carter v. United States*, 306 F.2d 283 (D.C. Cir. 1962), and numerous subsequent federal decisions, the court in *Sero* denied a motion to dismiss indicating that imposition on a youthful offender of a reformatory sentence which may be substantially longer than the sentence imposed on an adult for the same offense is unconstitutional absent an assurance of an opportunity for rehabilitation.

Treatment may be required to be distributed equally to all of the mentally ill. In *Nason v. Superintendent of Bridgewater State Hospital*, 353 Mass. 604, 233 N.E.2d 908, 913 (1968), the court, responding to the allegation that the medical standards in one hospital were less than those in other hospitals in the state, suggested that "[i]f such treatment is not available on a reasonable, nondiscriminatory basis, there is substantial risk that the constitutional requirements of equal protection of the laws will not be satisfied." The court in *McLamore v. State*, 186 S.E.2d 250 (S.C. 1972), however, rejected the assertion that confinement at a work camp, where less rehabilitative and educational facilities were available than in prison, violated equal protection.

> The benefits and detriments of prison life can never be exactly equal, and perhaps not even approximately equal. . .A penal system is not a single entity, but is made up of many parts. . .It is perhaps unfortunate that not every prisoner. . .is able to avail himself of an educational and/or rehabilitation program. . .Efforts to rehabilitate and educate are to be commended; to re-

quire that every prisoner be treated exactly alike might discourage rather than encourage the programs. [186 S.E.2d at 255]

In *Haziel v. United States*, 404 F.2d 1275 (D.C. Cir. 1968), Judge Bazelon strongly suggested that the denial of statutorily required treatment to an indigent juvenile is an equal protection violation, when an affluent juvenile can afford to secure private treatment.

> We do not find it necessary to determine the difficult question whether the statutory promise of noncriminal treatment in all but exceptional circumstances may be denied the juvenile because of the lack of adequate facilities. We well recognize the undeniable limitations upon the resources available to the Juvenile Court. On the other hand, we cannot ignore the mockery of a benevolent statute, unbacked by adequate facilities. And to the extent that a juvenile with more affluent parents may avoid waiver because of the availability of privately-financed treatment and rehabilitation, constitutional issues may lurk in the problem. [404 F.2d at 1280]

In *Lake v. Cameron*, 331 F.2d 771 (D.C. Cir. 1964), the court related the duty of the courts to explore alternative courses of commitment for a mentally-ill person to that person's inability to secure private treatment for herself. The court speculated that if no alternatives were found, equal protection problems would arise.

Inmates of Boys' Training School v. Affleck, 346 F. Supp. 1354 (D.R.I. (1972), advances a unique equal protection argument. Since the conditions in a wing of a juvenile institution were "anti-rehabilitative," confinement in the wing was found to be a denial of due process and equal protection. The finding was based on the assumption that, because the state would remove a juvenile from an environment like that in the wing if it was provided by his parents, the state cannot justify providing him with the same environment under its *parens patriae* powers.

> If a boy were confined indoors by his parents, given no education or exercise and allowed no visitors, and his medical needs were ignored, it is likely that the state would intervene and remove the child for his own protection. . . Certainly then, the state acting in its *parens patriae* capacity cannot treat the boy in the same manner and justify having deprived him of his liberty. Children are not chattels. [346 F. Supp. at 1367]

Finally the poignant words of Judge Bazelon in *Racism, Classism and the Juvenile Process*, 53 Judicature 373 (1970), are here relevant. Finding a subtle bigotry of classism infecting the juvenile justice system and faced with the need to close the gap between the promise and the reality of treatment, he suggests:

> At some point, just as English juries once refused to convict a man for stealing bread, American judges should perhaps study carefully the constitutionality of a law that refuses help to a child, and instead treats him as an adult, simply because no facilities are available. That would be a drastic step. But the law increasingly recognizes that every man has certain entitlements as a citizen. It is difficult to think what more basic entitlement there could be than a child's right to a fair start in life. [53 Judicature at 378]

Cruel and Unusual Punishment Arguments

The prohibition against cruel and unusual punishment, guaranteed by the Eighth Amendment to the U. S. Constitution, is another source of the right to treatment for both the criminally and noncriminally committed. Although a right to treatment for the criminally committed as yet may not exist, the absence of treatment in certain circumstances is cruel and unusual punishment. For example, the intentional denial of needed medical treatment to the criminally committed is cruel and unusual punishment. Moreover, since criminal confinement for a status or a disease constitutes cruel and unusual punishment, noncriminal confinement for a status or a disease may be justified only by treatment. The absence of treatment, then, is cruel and unusual punishment. Finally, certain practices and conditions in which the noncriminally committed are confined are cruel and unusual.

A right to treatment for prisoners does not yet exist, though a step in that direction has been taken. The court in *Holt v. Sarver*, 309 F. Supp. 362 (E.D. Ark, 1970), *aff'd*, 442 F.2d 304 (8th Cir. 1971), though holding that the constitution did not require a program of rehabilitation of prisoners, speculated that it might in the future.

> This Court knows that a sociological theory or idea may ripen into constitutional law, many such theories and ideas have done so. But, this Court is not prepared to say that such a ripening has occurred as yet as far as rehabilitation of convicts is concerned. Given an otherwise exceptional penal institution, the Court is not willing to hold that confinement in it is unconstitutional simply because the institution does not operate a school, or provide vocational training, or other rehabilitative facilities and services which many institutions now offer. [442 F.2d at 379]

Stokes v. Institutional Board of Patuxent, State of Maryland, 357 F. Supp. 701 (D. Md. 1973); *United States v. Wyandotte County Kansas,* 343 F. Supp. 1189 (D. Kan. 1972), *rev'd on other grounds* 480 F.2d 969 (10th Cir. 1973); and *McLamore v. State,* 186 S.E. 2d 250 (S.C. 1972), also have refused to recognize a right to treatment for prisoners. *Wyandotte* specifically rejects *Holt's* suggestion that such a right might one day exist.

Although *Holt* was unwilling to recognize a right to treatment for prisoners, at least for the present, it was willing to recognize that the absence of treatment in conjunction with conditions and practices not conducive to treatment is cruel and unusual punishment. "The absence of an affirmative program of training and rehabilitation may have constitutional significance where in the absence of such a program conditions and practices exist which actually militate against reform and rehabilitation." 442 F.2d at 379.

A prisoner has a constitutional right to receive needed medical treatment. "[T]here is a constitutional duty to provide needed medical treatment to a prisoner because the *intentional* denial to a prisoner of *needed* medical treatment is cruel and unusual punishment and violates the Eighth Amendment to the Constitution of the United States." *Ramsey v. Ciccone,* 310 F. Supp. 600, 605 (W.D. Mo. 1970). Accord, *United States v. Fitzgerald,* 466 F.2d 377 (D.C. Cir. 1972); *Black v. Ciccone,* 324 F. Supp. 129 (W.D. Mo. 1970); *Lopez Tijerina v. Ciccone,* 324 F. Supp. 1265 (W.D. Mo. 1971).

Several judicial decisions, although not holding that a prisoner has a constitutional right to needed medical treatment, have examined the adequacy of medical treatment in light of the cruel and unusual punishment prohibition. "The adequacy of medical treatment provided prison inmates is a condition subject to Eighth Amendment scrutiny." *Newman v. Alabama,* 349 F. Supp. 278, 280 (M.D. Ala. 1972). "If the treatment or lack of treatment of a prisoner is such that it amounts to indifference or intentional mistreatment, it violates the prisoner's constitutional guarantees." *Sawyer v. Sigler,* 320 F. Supp. 690, 696 (D. Neb. 1970). Accord, *Pinon v. Wisconsin,* 368 F. Supp. 608 (E.D. Wis. 1973).

Where "medical" treatment such as "aversion therapy" is not medically needed, but is an experimental technique involuntarily applied, the treatment constitutes cruel and unusual punishment. In *Knecht v. Gillman,* 488 F.2d 1136 (8th Cir. 1973), the court found that the administering of severely nauseating injections in order to produce a "Pavlovian" aversion to minor infractions of internal prison rules was not medical treatment and it was so disproportionate to the offense as to violate the Eighth Amendment.

The United States Supreme Court in *Robinson v. California,* 370 U.S. 660 (1962), holding that criminal commitment for a status or disease is cruel and unusual punishment, strongly implied that confinement for a status or disease would be constitutional only if treatment was provided.

> It is unlikely that any State at this moment would attempt to make it a criminal offense for a person to be mentally ill, or a leper, or to be afflicted with a venereal disease. A State might determine that the general health and welfare require that the victims of these and other human afflictions be dealt with by compulsory treatment, involving quarantine, confinement, or sequestration. But in the light of contemporary human knowledge, a law which made a criminal offense of such a disease would doubtless be universally thought to be an infliction of cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. [370 U.S. at 666]

If only treatment saves confinement for a status or disease from being cruel and unusual punishment, it therefore follows that confinement without treatment would be cruel and unusual But cf., *Powell v. Texas,* 392 U.S. 514 (1968).

Recently, several courts have permitted evidence proffered by the mentally ill and the mentally retarded on whether forced labor at the institutions in which they were confined constituted cruel and unusual punishment and involuntary servitude.

Downs v. Department of Public Welfare, 368 F. Supp. 454 (E.D. Pa. 1973). *Horacek v. Exon*, 357 F. Supp. 71 (D. Neb. 1973).

Likewise, conditions and practices in juvenile institutions are subject to examination under the cruel and unusual punishment prohibition. Confinement in Annex B of the Rhode Island Boys' Training School was found to be cruel and unusual punishment and enjoined. Annex B was a wing of a women's reformatory built in 1863. The wing was composed of dingy cement rooms with a bed, sink and a toilet which had to be flushed from the outside. Particularly revolting to the court was the practice of solitary confinement in stripped "bug-out" rooms. *Inmates of Boys Training School v. Affleck*, 346 F. Supp. 1354, 1365-67 (D.R.I. 1972). Confinement of young girls in a maximum security institution, built in 1904 as a monastery, was found to be cruel and unusual punishment. *Martarella v. Kelley*, 349 F. Supp. 575 (S.D.N.Y. 1972).

The following conditions and practices, *inter alia*, at a maximum security training school for boys in Texas were found to be cruel and unusual; physically abusing the juvenile inmates, tear gassing as a form of punishment, using solitary confinement, keeping a forced silence as punishment, performing by the hour "make-work," such as moving dirt from one place to another on the ground. *Morales v. Turman*, 364 F. Supp. 166, 173-174 (E.D. Tex. 1973). Routine beatings of juveniles with a "fraternity paddle" and the administration of tranquilizing drugs, not as therapy but to control excited behavior, was found to be cruel and unusual. *Nelson v. Heyne*, 355 F. Supp. 451 (N.D. Ind. 1973), *aff'd*, 491 F.2d 352 (7th Cir. 1974). The two week long solitary confinement of a juvenile in a "strip room" was found to be cruel and unusual. *Lollis v. New York State Department of Social Services*, 328 F. Supp. 1115 (S.D.N.Y. 1971). The administration and prescription on third-hand information of a tranquilizing drug as a "chemical restraint" was enjoined by the court in *In re Owens*, 9 Cr. L. Rptr. 2415 (Cook County Cir. Ct. , July 9, 1971). The conditions of a juvenile detention center in a jail were found to be cruel and unusual. *Juvenile Detention Center of the Baltimore City Jail*, CCH Pov. L. Rptr. par.13,641 (Supreme Bench of Baltimore City, Aug. 3, 1971). The four-hundred-thirty day confinement of a sixteen year old deaf-mute boy without treatment constituted cruel and unusual punishment. The court ordered treatment to be provided. *In re Harris*, 2 Crim. L. Rptr. 2412 (Cook County Juv. Ct. Dec. 22, 1967).

The court in *R. R. v. State*, 448 S.W.2d 187 (Tex. Civ. App. 1969), *appeal dismissed sub nom., Rios v. Texas*, 400 U.S. 808 (1970), refused to consider allegations of cruel and unusual punishment in a juvenile institution because of a lack of evidence.

Finally, it should be noted that the elasticity of the Eighth Amendment argument embraces elementary logic: it is cruel to confine a person with a promise of treatment which will better his condition and then not keep that promise by either withholding the promised treatment or by placing the person in an environment which is counterproductive to treatment, an environment which is so cruel and punitive as to completely defeat the rehabilitative goals hypothesised.

RELATIONS WITH OTHER AGENCIES

LOCAL

Law Enforcement Guidelines

Chapter 52 of Title 3 of the Texas Family Code governs the procedures law enforcement agencies must follow when taking a child into custody. The Chapter accomodates differing situations in different counties by allowing local law enforcement agencies and the juvenile court to jointly issue guidelines for the exercise of the discretion given a law enforcement officer as to his actions in a juvenile case.

One jurisdiction uses the following guidelines for a law enforcement officer taking a child into custody:

I. Complete a written Offense Report.

II. Determine age of offender (Ages over 10 years and under 17 years are referred to as "children").

III. Options of the Law Enforcement Officer:

OPTION 1 — WARNING NOTICE

Sec. 52.01 and Sec. 52.03

a. Law Enforcement Officer may choose to issue a Warning Ticket (complete Offense Report with word "Warning Ticket" written in constitutes a Warning Notice).

b. TICKET DISTRIBUTION

(1) Deliver one copy to child at time of apprehension.
(2) Deliver one copy to parent or guardian as soon after arrest as possible.
(3) Deliver one copy to office or officer designated by the Juvenile Court.
(4) Retain one copy in files of Law Enforcement Office.

OPTION 2 — Sec. 52.02 — Detain and deliver child to station.

OPTION 3 — Sec. 52.02 — Law Enforcement Agency may release the child to his parents, guardian, or adult relative's home.

OPTION 4 — Sec. 52.03 — Require parents or guardian to come to the station to accept responsibility of the child and to require the parent or guardian to promise "in writing" that the child will be brought before the Juvenile Court upon request. (In writing is provided when the parent signs the Warning Notice).

OPTION 5 — Sec. 53.02 — If the Law Enforcement Agency considers the child dangerous to himself or others or if it is obvious that the child would not comply with a Court Order to come in upon proper notice, then the child should be placed in a temporary detention facility until the Juvenile Court makes a determination.

OPTION 6 — Sec. 53.02 — A detention hearing must be requested and held not later than the next day after the child is taken into custody. Unless the order of the Court is obtained ordering further detention, the child shall be released.

Another jurisdiction has formulated these guidelines:

GUIDELINE INSTRUCTIONS FOR SEC. 52.02

(A) if a juvenile is taken into custody and it can be determined by the arresting agency that he/she is on probation or parole, the Juvenile Probation Department is to be contacted regardless of the offense;

(B) if a juvenile is taken into custody for committing an offense of the grade of a Felony Or Class A Misdemeanor, the agency taking the child into custody must contact the Juvenile Probation Department;

(C) if a juvenile is taken into custody for the offense of runaway or truancy (during school hours) the officer taking said child into custody should make out his/her report first and then do one of the following:

(a) in the case of the truant, (within the jurisdiction of the officer taking child into custody) contact the respective school that the youngster attends and see if the school authorities will pick up the child and return him to school or the officer himself transport the child to his respective school but need not contact the Juvenile Probation Department unless as stated in (A) above. If outside of jurisdiction notify Juvenile Probation Department. Mail in report to Juvenile Probation Department.

(b) in the case of a runaway, the officer taking the child into custody should first make out his/her report and transport the child to the Youth Services Bureau. If the runaway is also involved in an offense as stated in (B) above, then follow instructions set forth in (B).

(D) if a juvenile is taken into custody and it is believed that the child is in need of medical attention, the agency taking the child into custody will arrange for medical attention before referring the case to the Juvenile Probation Department, Youth Services Bureau, etc. In the event of an abused or battered child, the child should be taken to the emergency room if serious enough and the local Child Welfare Unit notified.

GUIDELINE INSTRUCTIONS FOR SUBSECTION (b) of 52.02

Sub-Sec. (b) of 52.02: "a person taking a child into custody shall promptly give notice of his action and a statement of the reason for taking the child into custody, to:

(1) the child's parent, guardian, or custodian; and

(2) the office or official designated by the juvenile court."

The officer taking the child into custody will so state on his/her offense report the nature and full details of the effert to notify number (1) and (2) above. EXAMPLE: this officer telephoned #713-935-0000, the home of the child taken into custody, at 10:15 P.M. and did not receive an answer. Or, this officer went to 1701 99th St., this city and informed Mrs. Juanita Doe that her son is in custody. Also, our department dispatcher telephoned the Intake Unit and advised, whoever the message was left with, at what time, that the Juvenile Probation Department is to contact that particular agency as soon as possible.

GUIDELINE INSTRUCTIONS FOR SUBSECTION (b) of 52.03

Sub-Sec. (b) of 52.03: "No disposition authorized by this section may involve:

(1) keeping the child in law-enforcement custody or;

(2) requiring periodic reporting of the child to a law-enforcement officer, law-enforcement agency or other agency."

(A) if applicable, the Intake Unit must be notified as soon as possible to avoid undue delay in keeping the child in custody;

(B) having a juvenile on Probation to a law-enforcement officer or agency, without prior knowledge of the Juvenile Court is prohibited.

GUIDELINE INSTRUCTIONS FOR SUBSECTION (c) of Sec. 52.03

Unless covered under another section or explanation in these guidelines, the agency taking a child into custody may recommend another agency as resource information but proper notificatioin of the case to the Juvenile Probation Department would still be required.

GUIDELINE INSTRUCTIONS FOR SUBSECTION (d) of Sec. 52.03

(1) Each law-enforcement agency will send the Juvenile Probation Department statistics indicating the number and kind of case disposed of pursuant to these guidelines on the first day of each calendar month following the date of disposition.

(2) Juvenile Probation Department will send the appropriate law-enforcement agency monthly statistics as to cases referred to such Department that are later disposed of through judicial proceedings.

Detention Facility Standards

Section 51.12 of Title 3 requires the juvenile board (if there is one) and the juvenile judge to inspect personally the detention facilities at least annually and to certify whether they are suitable for detention of children. The facility may be in another county. As long as juvenile offenders and adult offenders are not detained in the same compartment and juvenile offenders are not permitted any contact with adult offenders, a county may locate its juvenile detention facility in the same building as its county jail. It is unlawful to keep a child in a facility that has not been so certified. Matter of G.T.H., 541 S.W.2d 527 (Tex. Civ. App.--Eastland, 1976, no writ)

Note that this certification required by Section 51.12(c) and the *designation* of a place of detention alluded to in Sections 51.12(e) and 52.02(a)(3) (among others) are two separate matters. The designation of a place of detention is made by the judge alone. Although he could conceivably make the designation on a case-by-case basis, likely he will enter an order establishing one or more certified facilites as the designated place of detention until some future time.

There is some question as to whether other agencies, specifically the Commission on Jail Standards and the Department of Public Welfare, have any responsibility for inspection of juvenile detention facilities. Section 51.12(c)(2) of the Family Code requires the juvenile detention facility, if it is a county jail, to be in accordance with the requirements of Article 5115, Texas Revised Civil Statutes Annotated, defining "safe and suitable jails." That law also provides that its requirements are enforceable by the Commission on Jail Standards. The question concerning the responsibility of the Department of Public Welfare revolves around its jurisdiction to license day care centers. Both these questions have been submitted to the Attorney General for resolution and an opinion is expected soon.

Regardless, it is clear that the juvenile board (if there is one) and the juvenile judge have responsibility to inspect the juvenile detention facilities.

In aiding the juvenile board in carrying out this duty, the probation officer should familiarize himself with the standards for jails, set out in Article 5115, Texas Revised Civil Statutes Annotated (found on pages 15.66 - 15.69 of this Manual) and the Rules of the Commission on Jail Standards (found on pages 15.68 - 15.85), which provide standards additional to those found in Article 5115.

Traffic Offenses

The exception of "traffic offenses" from the definitions of delinquent conduct or conduct indicating a need for supervision in Title 3 means the juvenile court is not concerned with violations of penal statutes "cognizable by" Article 802e of the Penal Code (Section 51.02(9)(A)) nor with violations of motor vehicle traffic ordinances of incorporated cities or towns in the state (Section 51.02(9)(B)).

Article 802e of the Penal Code (now found in the Civil Statutes as Article 6701l-4) provides that a male minor over 14 and under 17 years of age or a girl over 14 and under 18 years of age who drives a motor vehicle on a public road or highway while under the influence of intoxicating liquor or who drives in such way as to violate any traffic law of the state shall be guilty of a misdemeanor and shall be fined not more than $100. The Attorney General has held that the unequal treatment of males and females in this statute makes it constitutionally unenforceable against persons in the seventeen to eighteen year old category but that it is enforceable against those seventeen and under. TEX. ATT'Y. GEN. OP. NO. H-232 (1974).

Section 4 of the article provides that the offenses created in the act are under the jurisdiction of the courts regularly empowered to try misdemeanor cases carrying the same penalty and shall not be under the jurisdiction of the juvenile courts. But, it expressly is not to be construed to otherwise repeal or affect the statutes regulating the powers and duties of juvenile courts. TEX. ATT'Y. GEN. OP. NO. WW-547 (1959). The 1975 amendments to the Family Code specifically adding driving while intoxicated offenses to the jurisdiction of the juvenile court (Section 51.03(b)(4)) apparently means that both the juvenile court and the adult traffic court have jurisdiction of these types of offenses.

It is left to the discretion of the juvenile probation officer whether to file the complaint in the lower courts or the juvenile court. Upon arrest of a juvenile for DWI, a breathalizer test should be administered with the consent of the juvenile. The arresting officer should complete a Juvenile Offense Report if the test proves positive. After completing these tasks, the parent, guardian, or custodian of the juvenile should be notified and the juvenile should be released in their custody. In the event the juvenile probation officer chooses to have the case filed in the lower courts, the arresting officer will be called on to file the case.

If in the adult court, the statute requires that the parents be present or at least a diligent effort be made to obtain their presence during the trial of the offense. The minor cannot be placed in jail for failure to pay the fine, but the court can suspend and take from him his driver's license until the fine is paid. A minor who fails to make bond pending trial is to be treated as an adult and may be confined in jail, however. TEX. ATT'Y. GEN. OP. NO. WW-547 (1959).

The other traffic offenses recognized in Article 802e and therefore not a part of the juvenile courts' jurisdiction are:

> Vernon's Texas Penal Code 795--No racing or contest for speed. (now repealed--see Article 6701d, Section 185)
>
> Vernon's Texas Penal Code 801--The law of the road. (repealed by Acts 1973, 63rd Leg., ch. 399, effective January 1, 1975)
>
> Vernon's Texas Penal Code 827a--Regulating operation of vehicles on highways. (now Article 6701d-11)
>
> Vernon's Texas Penal Code 827f--Speed of vehicles on beaches; driving while intoxicated. (now Article 6701d-21)
>
> Vernon's Texas Civil Statutes 6701d--Uniform traffic act.

The driver's license laws also have a specific provision related to juveniles. It provides that a provisional license can be suspended upon the recommendation of the Juvenile Court when it is found that that the child has committed any offense in which a motor vehicle was used to travel to or from the scene of an offense. Traffic offenses are expected from the Statute.

Liquor Violations

Liquor violations involving minors are covered by provisions of the Penal Code (Liquor Control Act), in addition to the juvenile act. The liquor control act contains three provisions under which minors can be prosecuted. Each of these violations is prosecuted in justice of the peace or municipal court, and the juvenile court is not involved. TEX. ATT'Y. GEN. OP. NO. H-320 (1974).

Section 14(a) of Article 666-17 of the Penal Auxiliary Laws, the only one of these sections used to any real extent in most counties, makes it unlawful for any person under 18 years to purchase any alcoholic beverage or to possess any alcoholic beverage unless he or she is a bona fide employee on the licensed premises where the alcoholic beverage is possessed or unless he or she is accompanied by his or her parent, guardian, adult husband, adult wife, or other adult person into whose custody he or she has been committed for the time by some court. In the case where the adult is present, he must be actually visible and personally present at the time of the consumption or possession by the person under 18.

Counties bordering on other States may have some occasion to use Sections 14(d) and 21, having to do with the bringing of alcoholic beverages into the State of Texas by minors.

Schools

The working relation of juvenile probation departments to schools is largely a matter of local policy. However, the state statutes do provide some guidance on the handling of truants.

Before the 1975 amendments, "truancy" in the Family Code was defined as violation of the compulsory school attendance laws, requiring reference to the Texas Education Code. The 1975 amendments, however, define truancy in the Family Code itself (Section 51.03(b) (2)) to be the unexcused voluntary absence of a child from school:

--10 or more days or parts of days within a six-month period or
--3 or more days or parts of days within a four-week period.

An absence is excused when it results from:

(1) illness of the child;

(2) illness or death in the family of the child;

(3) quarantine of the child and family;

(4) weather or road conditions making travel dangerous;

(5) an absence approved by a teacher, principal, or superintendent of the school in which the child is enrolled; or

(6) circumstances found reasonable and proper. (Section 51.03(d)).

Parents of violators of the Compulsory School Attendance Law may have complaints filed against them in the County, Municipal or Justice of the Peace Court of their residence. The teacher or the school principal will be the complainant and will sign the complaint. State law provides three ranges of penalties for the first three separate violations. If after three complaints have been filed and a disposition has been made in each case, the child continues to refuse to attend school, the child should be referred to the Juvenile Probation Department for action authorized by the Texas Family Code.

If at any time during the initial stages, a parent confesses to the judge that he can't make the child attend achool, and shows that he has made a diligent effort to do so, the judge should refer the child to the Juvenile Probation Department for action authorized by the Texas Family Code.

Children who are truant on occasion will be dealt with by the school principal where the child attends and will be punished by whatever method the school board has authorized.

Intercounty Agreement on Juvenile Probation Services in the State of Texas

Findings and Purpose: Juvenile proceedings may be commenced in either (1) the county in which the child resides; or (2) the county in which the alleged delinquent conduct or conduct indicating a need for supervision occurred.

A child's case may be transferred to another county: (1) when a preliminary investigation has been made and it is determined that it is in the best interest of the child and the community that the child be returned to the county of his residence without further proceedings in the county in which the alleged delinquent conduct

or conduct indicating a need for supervision occurred; (2) when a child has been adjudicated in a county other than the county of his residence and the case is transferred to the child's county of residence for disposition so long as the child and his attorney consent; or (3) when a child and his family move to another county.

Courtesy supervision is requested, (1) when a child has been adjudicated in the county of his residence and placement is secured outside the county or (2) when a county other than the residence county adjudicates a case and returns the child to his home for placement, but the court chooses to retain jurisdiction in the case.

The cooperation of all counties to this agreement is essential in order to provide adequate service to promote rehabilitation for the child and for the protection of the public, both in the transfer of cases for adjudicatory or dispositional hearings or in the requests for courtesy supervision where findings have already been made.

A. RETURN OF RUNAWAYS

RESPONSIBILITY OF JUVENILE PROBATION OFFICER IN THE COUNTY WHERE THE CHILD IS IN CUSTODY:

(1) Contact the parents, guardian, custodian, or authorities in the county of child's residence to make arrangements for the child's return home.
(2) Obtain signature on "Request for Shelter" or arrange for a Detention Hearing if the child is in detention.
(3) Forward the referral (offense report) to the Probation Department in the county of child's residence.
(4) Make transportation arrangements and transport the child to airport, bus station, or train station when necessary.

RESPONSIBILITY OF JUVENILE PROBATION OFFICER IN THE COUNTY WHERE THE CHILD RESIDES:

(1) Assist the Juvenile Officer from the county where child is in custody for the child's return home.
(2) Use the offense report sent to them in accordance with the Guidelines of the Probation Department in the county of child's residence under Title 3 of the Family Code.

B. CHILD REFERRED ON A MISDEMEANOR

RESPONSIBILITIES OF JUVENILE PROBATION OFFICER IN THE COUNTY WHERE THE CHILD IS IN CUSTODY.

(1) Notify the parents, guardian or custodian, and the Juvenile Probation Department in county where child resides that the child has been referred. (If the child is on probation, the new referral shall be sent to the county in which the child is on probation unless permission is given by the Juvenile Court Judge of that county to release jurisdiction).
(2) The Juvenile Probation Officer shall send the offense report to them for whatever action they feel necessary.
(3) If the child is in custody, make transportation arrangements and transport child to airport, bus station, or train station when necessary.

RESPONSIBILITY OF JUVENILE PROBATION OFFICER IN THE COUNTY WHERE THE CHILD RESIDES.

(1) Assist the Juvenile Probation Officer from the county where the child is in custody for his/her return.
(2) Use the offense report sent to them in accordance with the Guidelines of the Probation Department in the county of child's residence under Title 3 of Family Code.

C. CHILD REFERRED ON A FELONY

RESPONSIBILITY OF THE JUVENILE PROBATION OFFICER IN THE COUNTY WHERE THE CHILD WAS TAKEN INTO CUSTODY:

(1) Notify the parent, guardian or custodian, and the Juvenile Probation Department in the county where the child resides that the child has been referred.
(2) Make a preliminary investigation and determination as to the best interest of the child and public (Detention or Release).
(3) If the child is released by a law enforcement agency or Juvenile Probation Officer to the county where the child resides, send the offense report to the county of residence with the notation on the referral "returned to home county for adjudication and disposition."

(4) If the child is detained in custody and a petition filed, the Juvenile Probation Officer shall prepare the case for Court.
   a. This should include a request to the home county Juvenile Probation Officer for all pertinent information in respect to the case. (i.e., home study, school records, medical, psychological, psychiatric and any other information available).
   b. Inform the Juvenile Probation Officer in the home county of results of the court hearing.

RESPONSIBILITY OF JUVENILE PROBATION OFFICER IN THE COUNTY WHERE THE CHILD RESIDES:

(1) Cooperate with the Juvenile Probation Officer from the county where the child was taken into custody.
(2) Take whatever action they feel is necessary if the child is returned prior to any court hearing.
(3) Furnish all pertinent information in respect to the case for a court hearing if requested.

D. *TRANSFER TO ANOTHER COUNTY*

When a child had been adjudicated in a county other than the county of his residence, the case may be transferred to the child's county or residence for disposition if the child and his attorney consent. (Section 51.07).

RESPONSIBILITY OF JUVENILE PROBATION OFFICER OF THE COUNTY WHERE THE CHILD WAS ADJUDICATED (SENDING COUNTY).

(1) A request to transfer the case should be made to the Judge of the receiving county prior to the court adjudication.
(2) Send all information. (The clerk of the court will forward all legal documents maintained by the sending court).
(3) When jurisdiction is transferred, send receiving county a list of agencies (if any) having juvenile information on child. Receiving county will then have all material from sending county for sealing the record.

RESPONSIBILITY OF THE JUVENILE PROBATION OFFICER OF THE COUNTY WHERE THE CHILD RESIDES (RECEIVING COUNTY).

(1) Prepare a court report for the adjudicatory hearing.
(2) Provide supervision for the length of the probationary period.
(3) Notify sending court when the file has been sealed.

When a child has been adjudicated and a disposition made in a county other than the county of his residence, the case may be transferred to the child's county of residence for supervision.

RESPONSIBILITY OF JUVENILE PROBATION OFFICER WHERE THE CASE WAS HEARD.

(1) Prior to the hearing, a request to transfer the case should be made to the Judge of the receiving county. At the same time, request a home study to be made and all pertinent information (school records, medical, psychological, psychiatric, etc.) forwarded for preparation of the court report.
(2) Prepare court reports.
(3) Transfer all records to the receiving county. (The clerk of the court will forward all legal documents maintained by the court).
(4) When jurisdiction is transferred, send receiving county a list of agencies (if any) having juvenile justice information on child. The receiving county will then have all material from sending court for sealing the file.

RESPONSIBILITY OF THE JUVENILE PROBATION OFFICER OF THE COUNTY WHERE THE CHILD RESIDES (RECEIVING COUNTY).

(1) Prepare social information and forward to sending county for court report.
(2) Provide supervision for the length of the probationary period.
(3) Notify sending court when records are sealed and probation terminated.

When a child on probation moved with his family to another county.

RESPONSIBILITY OF THE JUVENILE PROBATION OFFICER OF THE SENDING COUNTY.

(1) Confirm the move and new residence with receiving county.
(2) Ascertain the willingness of the Juvenile Probation Officer and Juvenile Court in the receiving county to accept transfer of jurisdiction.

(3) Inform the sending Juvenile Court of the willingness of the receiving county Juvenile Probation Officer and Juvenile Court to accept transfer of jurisdiction and request and transfer jurisdiction.
(4) When jurisdiction is transferred, send receiving county the case folder with a list of agencies (if any) having juvenile justice information of child. The receiving county will then have all material sending county had when it comes time to seal the file.

RESPONSIBILITY OF THE JUVENILE PROBATION OFFICER IN THE RECEIVING COUNTY.

(1) At the request of the sending county, confirm move of child and family to receiving county.
(2) Interview the child and family, and confer with receiving county to accept transfer of jurisdiction.
(3) Inform the sending county of receiving county's willingness to accept transfer of jurisdiction.
(4) Assume full casework supervision of child's case when jurisdiction is transferred.

E. *COURTESY SUPERVISION OF PROBATIONERS*

RESPONSIBILITY OF JUVENILE PROBATION OFFICER IN THE COUNTY WHERE THE CHILD WAS ADJUDICATED (SENDING COUNTY).

(1) Contact the Juvenile Probation Officer in the receiving county to make a home evaluation prior to court hearing, whenever possible.
(2) Furnish all pertinent information, including a copy of the court orders, social case study, rules of probation, etc. to the receiving county.
(3) Retain jurisdiction in the sending county.
(4) Return the child to sending county should he have to be returned for any reason.
(5) Recall all information in order to seal the file.

RESPONSIBILITY OF JUVENILE PROBATION OFFICER IN THE COUNTY WHERE THE CHILD IS PLACED BY COURT ORDER (RECEIVING COUNTY).

(1) Respond immediately (within five days) to a request for a home evaluation for possible placement of a child in receiving county.
(2) Assume the duties of supervision over the child placed in receiving county.
(3) Send progress reports regularly (at least once every 60 days) to the sending county.
(4) Assist in the return of a child if the need arrives.
(5) Send all information regarding a child to the sending county upon the child's release from probation or return to the sending county.

F. *MIGRANT WORKERS*

It is the purpose of this section to provide a standardized procedure for the State so that the child of the Migrant Worker who is on probation can be offered continued services throughout the entire period of probation no matter in what county he resides.

RESPONSIBILITY OF THE JUVENILE PROBATION OFFICER IN THE COUNTY WHERE THE CHILD IS ON PROBATION.

(1) Inform the probationer of his/her responsibility to report to the Probation Department in each county he/she resides during the migration period.
(2) Offer continued supervision and assistance after the child returns to the county.

RESPONSIBILITY OF JUVENILE PROBATION OFFICER IN THE COUNTY WHERE THE CHILD IS RESIDING TEMPORARILY.

(1) Assign a Probation Officer to work with the child during his/her stay in that county.
(2) Inform the home county in writing of the child's whereabouts, place of employment, or school attending, when the child arrived, and when he/she left the county. (Complete form provided).
(3) Return all records to the county in which the child is on probation.

MIGRANT WORKERS
REPORT FORM

NAME:

ADDRESS:

WITH WHOM HE/SHE IS LIVING:

CHECK APPROPRIATE BOXES:

ATTENDING SCHOOL ☐

WORKING ☐

ATTENDING TRAINING ☐

REFERRAL ATTACHED ☐

(CHILD)_____ arrived in_____ County on _____, reported to Juvenile Probation on _____, and left _____ with plans to go to _____ County.

SIGNED_____
Juvenile Probation Officer
Telephone Number

Roster of Participating Counties June 23, 1976

ANGELINA COUNTY

Hon. Claude E. Welch
County Judge
County Courthouse
Lufkin, Texas 75901

Mason Bryant
Chief Juvenile Probation Officer
County Courthouse
Lufkin, Texas75901

BASTROP COUNTY

Hon. Joe L. Placka

Charles M. Lucas
Chief Juvenile Probation Officer
Box 351
Bastrop, Texas 78602

BELL COUNTY

Hon. J. H. Russell
Juvenile Court
County Office Building
Belton, Texas 76513

Walter J. Minica
Chief Juvenile Probation Officer
County Office Building, Room 204
Belton, Texas 76513

BURLESON COUNTY

Hon. Mark Caperton

Charles M. Lucas
Chief Juvenile Probation Officer
Box 351
Bastrop, Texas 78602

CAMERON COUNTY

Hon. Darrell Hester
197th District Court
1150 E. Madison
Brownsville, Texas 78520

Amador Rodriguez
Chief Juvenile Probation Officer
1150 E. Madison
Brownsville, Texas 78520

COCHRAN COUNTY

Hon. M. C. Ledbetter
121st District Court
County Courthouse
Morton, Texas 79346

W. M. Butler
Adult & Juvenile Officer
Cochran County, Room 204 Courthouse
Morton, Texas 79346

COOKE COUNTY

Hon. Larry Sullivant
County Judge
County Courthouse
Gainesville, Texas 76240

Norris Scott
Juvenile & Adult Probation Officer
County Courthouse
Gainesville, Texas 76240

CRANE COUNTY

Hon. Ken G. Spencer
109th District Court
County Courthouse
Andrews, Texas 79714

M. C. Brunette
Juvenile Probation Officer
202 Vivian
Andrews, Texas 79714

CROSBY COUNTY

Hon. Robert Work
Substitute Juvenile Judge

R. L. Orman
Juvenile Probation Officer
County Courthouse
Crosbyton, Texas 79322

DALLAS COUNTY

Hon. T. L. Bedard
Juvenile Court #1
4th Floor New Courthouse
Dallas, Texas 75202

George W. Looney
Chief Juvenile Probation Officer
4711 Harry Hines
Dallas, Texas 75235

Hon. Pat McClung
Juvenile Court #2
4th Floor Records Building Annex
Dallas, Texas 75202

ECTOR COUNTY

Hon. Phillip Godwin
County Court at Law
County Courthouse, Room 227
Odessa, Texas 79762

Morris Petty
Chief Juvenile Probation Officer
1401 East Yukon
Odessa, Texas 79762

FORT BEND COUNTY

Hon. Sidney Brown
Domestic Relations Court
County Courthouse
Richmond, Texas 77469

Jim R. Mussett
Chief Probation Officer
County Courthouse, Room 207
Richmond, Texas 77469

HARRIS COUNTY

Hon. Robert L. Lowry
Juvenile Court #1
Family Law Center
Houston, Texas 77002

Hon. W. H. Miller
Juvenile Court #2
Family Law Center
Houston, Texas 77002

Hon. Criss Cole
Juvenile Court #3
Family Law Center
Houston, Texas 77002

San Schoenbacher
Chief Juvenile Probation Officer
3540 West Dallas Avenue
Houston, Texas 77019

JOHNSON COUNTY

Hon. C. C. (Kit) Cook III
County Judge
Johnson County Courthouse
Cleburne, Texas 76031

Wayne Shaw
Juvenile Probation Officer
County Courthouse, Room 303
Cleburne, Texas 76031

KLEBERG COUNTY

Hon. William Dunham, Jr.
28th District Court
County Courthouse
Corpus Christi, Texas 78401

Mario J. Salazar
Adult & Juvenile Probation Officer
Box 1191
Kingsville, Texas 78401

LAMAR COUNTY

Hon. Henry Braswell
6th District Court
County Courthouse
Paris, Texas 75460

Bobby Lockwood
Juvenile Probation Officer
County Courthouse
Paris, Texas 75460

LEE COUNTY

Hon. C. B. Boethel
County Judge
Box 33
Giddings, Texas 78942

Charles M. Lucas
Chief Juvenile Probation Officer
Box 351
Bastrop, Texas 78602

LIBERTY COUNTY

Hon. Harlan D. Friend
County Judge
County Courthouse
Liberty, Texas 77575

Bill Lofton
Juvenile Probation Officer
3304 Lincoln
Liberty, Texas 77575

MONTAGUE COUNTY

Hon. Marvin F. London
97th District Court
County Courthouse
Montague, Texas 76251

Bob Minor
Juvenile & Adult Probation Officer
County Courthouse
Montague, Texas 76251

MONTGOMERY COUNTY

Hon. Ernest Coker
9th District Court
County Courthouse
Conroe, Texas 77301

Will Willette
Chief Juvenile Probation Officer
211 Courthouse
Conroe, Texas 77301

NACOGDOCHES COUNTY

Dan Norton
Probation Officer
Box 1086
Nacogdoches, Texas 75961

PANOLA COUNTY

Hon. Danny Davidson
County Judge
County Courthouse
Carthage, Texas 75633

Rick Wilkinson

PECOS COUNTY

Hon. Charles E. Sherill, Jr.
112th District Court
Box 723
Fort Stockton, Texas 79735

Eugene Upshaw
Juvenile Probation Officer
Box 1647
Fort Stockton, Texas 79735

REEVES COUNTY

Hon. H. D. Glover
County Judge
County Courthouse
Pecos, Texas 79772

John F. Lewis
Juvenile Officer
Box 749
Pecos, Texas 79772

RUSK COUNTY

Hon. James B. Porter
Rusk County Courthouse
Henderson, Texas 75652

Jerry L. Kelsey
State Department of Public Welfare
Social Service Unit 20
P. O. Box 1026
Henderson, Texas 75652

TAYLOR COUNTY

Hon. Henry J. Strauss
Domestic Relations Court
County Courthouse
Abilene, Texas 79602

George Maxwell
Juvenile Officer
County Courthouse
Abilene, Texas 79602

TOM GREEN COUNTY

Hon. Earl W. Smith
51st District Court
Room 201 Courthouse
San Angelo, Texas 76901

Albert V. Push
Juvenile Probation Officer
Room 307 Courthouse
San Angelo, Texas 76901

VAN ZANDT COUNTY

Hon. Richard L. Ray
County Judge
County Courthouse
Canton, Texas 75103

Don Henry Reid
Juvenile Officer
205 East Odom
Canton, Texas 75103

WEBB COUNTY

Jesus P. Laurel
Juvenile Officer
1003 Victoria St., Box 745
Laredo, Texas 78040

Community Social Agencies

One of the most valuable tools available to the probation office is the proper and regular use of those social agencies established and operating in the community.

The typical juvenile case is complex and frequently involves more than one client. Neither the department nor the individual probation officer can be expected to be capable of independently performing all the functions and handling all the problems involved in working with a child and the child's family. The strength of the individual probation officer will be measured by awareness and capacity to use other agencies effectively.

There is little question concerning the need for a cooperative relationship with other agencies when problems related to schooling, employment, medical needs, and financial assistance are involved. If probation officers are unqualified to handle a situation capably, and fail to ask the cooperative assistance of another agency qualified to handle the problem, they are not completely and adequately performing their duties.

The probation officer should know the community and the types of services available. By actively becoming a member of a group of professionals in the social work field, for example, the officer will not only learn about some of the services performed by other agencies, but will develop a better understanding of probation as seen by the community.

The technique of using services of other agencies is one that every probation officer should develop. This cooperation requires an understanding of the policies and procedures of the agency from whom the probation department is asking service. The probation officer, in making a referral, should supply the agency with all the data needed. It must be recognized that agencies are limited by budget, laws, and rules. They are not always equiped to render the service the officer desires. The officer must use the proper channels of referral and realize that the service requested is not a right which can be demanded.

The probation department will work cooperatively with other agencies. A cooperative case is one in which planned treatment is carried on simultaneously by two or more agencies and two or more workers. Reporting between agencies is a professional courtesy conducive to good public relations and sound treatment. There is nothing incompatible in probation with another agency's working cooperatively with the probation officer. This in no manner will transfer the legal responsibility vested in the probation officer as an officer of the court.

Among the many functions of the Texas State Department of Public Welfare is the payment of Aid to Families with Dependent Children grants. Many children whose fathers are not in the home are being supported by these funds. The public assistance caseworkers can also provide emergency food stamps.

The Texas Rehabilitation Commission has the function of training and assisting in finding employment for those offenders eligible for their programs.

Community Mental Health and Mental Retardation centers are to become more involved in treatment and rehabilitation of offenders. Every effort should be made to develop working agreements between the two agencies to enhance the services to the probationer.

The Salvation Army is one of the many agencies that can provide lodging and clothing emergencies.

Legal Aid societies may provide free legal services to those who cannot afford such.

Volunteer Programs

Volunteers should not be thought of as professional probation officers, and consequently the limits of their responsibility and authority should be clearly defined. On the other hand, it should be recognized that skills and training are a matter of degree and that individual volunteers have varying skills and training which allow them to handle specific kinds of problems.

The officer assigned to train volunteers must attempt to involve each volunteer in the probation program to the extent of the volunteer's capacity, and to accord each volunteer genuine respect for efforts. Care should be taken at all times that the volunteer's role is carefully defined; yet, at the same time care must be taken that proper attention is paid to the volunteer's problems and abilities in assisting in the probation program.

Appointment Procedures: The volunteer probation counselor is a distinct personnel category. The volunteer probation counselor should be interviewed and screened by the volunteer coordinator, or chief probation officer. A background investigation should also be completed before the individual is accepted. The volunteer counselor, at the time of acceptance, should be assigned to a professional probation officer who will act as a supervisor. Volunteers should be informed of the limits of their responsibility and authority. Volunteers may *NOT* be empowered with the power of arrest; however, they should be assigned the responsibility of assisting and directing probationers to resources available in the community. They may engage in individual or group counseling when qualified.

Administration of Program: No experience is needed to qualify as a volunteer, although an interest and willingness to become involved with someone who has committed an offense against society is necessary. The volunteer should be encouraged to use imagination, ingenuity, individuality and initiative within reasonable bounds set by the probation department. The following are some of the ways a service volunteer can assist the probation department in the job of rehabilitating the public offender:

(a) The volunteer can work in cooperation with the probation officer to meet the needs of an individual probationer. For example, a volunteer can act as a listener or friend and be available in times of crises for the probationer. More concrete assistance might include helping the probationer to improve educational progress or assisting in family matters. The personality and situation of the individual probationer will indicate what is needed. The volunteer decides how far to go in helping to solve the problem.

(b) Volunteers may give individual or group counseling when qualified. Many volunteers have become effective leaders in group counseling. Some volunteers have had experience which equips them to work with special problems such as alcoholism. Some have developed an interest in group counseling through work with individuals and should be given the opportunity to demonstrate their ability to handle a group.

(c) Volunteers may assist the probation officer with pre-sentence investigations. The volunteer may help the probation officer by talking to references, checking records, contacting past and present teachers or employers, etc. The court may use this study to aid in deciding what the sentence should be and the officer may use it to formulate a treatment plan for the offender. The volunteer should work under the direction of the probation officer in obtaining the needed information.

(d) People with specialized knowledge may act as consultants. A person with wide business contacts in the community may be able to assist in the employment field. A person with knowledge of educational opportunities may help probationers take advantage of courses of study open to them. Consultants may not only assist individuals but also meet with counseling groups being conducted by the probation officer. When the discussion leader feels the group is ready for it, a consultant with expertise in a particular field may be requested to meet with them.

(e) A volunteer can assist with special needs of the probationer. Occasionally, a probation officer will not have the time to help a probationer or family follow through on some opportunity to improve their situation. They may only need a ride to some destination such as a job interview or treatment appointment. Sometimes a probationer may not feel adequate to handle a new situation and may need someone to go along as moral support to help present a case. The mere presence of another citizen of good reputation in the community can open doors that may otherwise be closed. These would be occasional projects to ease critical situations for the probationer.

(f) Professional people such as psychiatrists, psychologists, medical doctors, or dentists, may work in a one-to-one relationship, lead group discussions, or perform services in their specialized field.

(g) Volunteers not interested in working directly with offenders may find it interesting to do clerical work in the probation department office. This might include filing, along with odd jobs with which the office staff may need help.

A manual of procedure should be provided for each volunteer probation counselor. This manual should be carefully reviewed by the training officer with the volunteer.

STATE

Texas Youth Council

INTRODUCTION: The Texas Youth Council (TYC) is the state-level agency charged with the responsibilities to administer institutional and community-based programs for delinquents (i.e., children committed to TYC for having engaged in delinquent conduct pursuant to Title III of the Texas Family Code), status offenders (i.e., children committed to TYC for having violated a condition of their probation which was entered upon a finding that they were truant or runaway under the Title III of the Texas Family Code), and dependent and neglected children (i.e., children placed in TYC's conservatorship pursuant to a determination under Title II of the Texas Family Code). TYC policies are set by a six-member Board of Directors the members of which are appointed by the Governor. The day-to-day operations of the agency, however, are the responsibility of an Executive Director who serves at the pleasure of the Board. Laws regarding placement of children with TYC can be found in Title II and III of the Family Code. Laws governing the internal operations of the agency can be found in Article 5143d of Vernon's Civil Statutes. The ensuing paragraphs briefly describe TYC's programs for the reception and rehabilitation of delinquents, status offenders, and dependent and neglected children respectively. The final section contains a basic discussion of TYC's community assistance program as well as its role in administering the Interstate Compact on Juveniles.

DELINQUENTS: Delinquent children committed to TYC are received at the agency's Statewide Reception Center located in Brownwood. Residential rehabiliation programs for delinquents are carried on in TYC correctional schools, in privately-operated residential contract programs, and in TYC-run halfway houses. Non-residential rehabilitative efforts are carried on within the confines of TYC field service caseloads. Additional discussion of TYC's reception and rehabilitation programs for delinquent children follows:

A. Reception Center: TYC assumes responsibility for the care, custody, and control of a delinquent child properly committed to the agency upon the child's arrival at the Statewide Reception Center in Brownwood. Children are ordinarily transported to the Center by an officer of the committing court or a representative of the committing county's sheriff's department. Upon his arrival at Brownwood, the child must be accompanied by: (1) a completed TYC Commitment Summary Form, (a) a valid commitment order or certified copy therof; (3) a birth certificate or certified copy thereof, (4) an updated social history report (to be accompanied by a psychological or psychiactric evaluation, if available, and if completed within the last year), (5) school records, and (6) medical records (including immunization records and identification of current medication needs). A copy of TYC's Commitment Summary Form and instructions for its proper completion appear herein on pages 7.02-7.05. The Reception Center receives children 24 hours per day, seven days per week. It is preferable, however, for the child to arrive between 8:00 a.m. and 5:00 p.m., Monday through Friday, so that he may be provided with more immediate and complete professional attention.

   During his stay at the Reception Center each child receives complete medical and dental examinations. Psychological evaluations are conducted and, if the need is indicated, a psychiatric evaluation is arranged. In addition, the extent to which a child possesses a number of basic inter-personal skills is assessed. Information provided by the committing court (i.e., completed Commitment Summary Form and other documents listed above) is also reviewed by the Reception Center staff and integrated with the results of tests and interviews conducted at Brownwood.

Texas Youth Council

Commitment Summary

INSTRUCTIONS: *Please print. Fill in as completely as possible. Leave shaded area blank. See other side.*

TYC CASE NUMBER | C.A.TL | DATE ADMITTED | NAME (last, first, middle) | BIRTHDATE | BIRTH VERIFICATION (56) ☐ Yes (0) ☐ No (1) | 0 0 (79 80)

BIRTHPLACE: City | County or State (if not Texas) or Country

PHYSICAL DESCRIPTION: Citizenship | Sex | Race | Color hair | Color eyes | Ht. ft. in. | Wt.

COMMITMENT: County | Date | 0 1 (79 80)

LEGAL GUARDIAN. Name_____

Address_____ Phone - Home/Work_____

LOCATION OF CHILD'S BELONGINGS.

Address_____ Phone_____

COURT I.D. CODE | NAME OF COURT AND NUMBER *(Sitting as Juvenile Court)* | CAUSE NUMBER | JUDGE'S LAST NAME | 0 2 (79 80)

TYC CASE NUMBER | C.A.TL | DESCRIPTION OF COMMITTING OFFENSE | CODE

ORIGINAL REFERRAL SOURCE (62-63): ☐ TYC (01) ☐ Law Enforcement (03) ☐ Parent (04) ☐ School (09) ☐ Other (20)

DATE OF OFFENSE | 1 0 (79 80)

PLACE OF OFFENSE: County, state if not Texas

LOCATION (20): ☐ Urban (1) ☐ Suburban (2) ☐ Rural (3) | 0

ALONE (24): ☐ Yes (0) ☐ No (1)

FORCE OR WEAPON (25-27): ☐ Bludgeon (BLG) ☐ Firearm (GUN) ☐ None (NON) ☐ Strongarm (STG) ☐ Knife (KNF) ☐ Other/unknown (ØTH)

VALUE OF PROPERTY LOSS: $____.00

☐ $ 0 - $ 10 ☐ $ 11 - $ 50 ☐ $ 51 - $ 200 ☐ $ 201 - $ 1,000 ☐ $1001 - $10,000 ☐ over $10,000

1 1 (79 80)

DP-761001-1

NOTE: *Pages 1 and 2 must both be filled out.*

7.02

Texas Youth Council

Commitment Summary

INSTRUCTIONS: *Please print. Fill in as completely as possible. Leave shaded area blank.*

TYC CASE NUMBER (1)

Name _____

LIST OF PREVIOUS REFERRALS

DATE OF REFERRAL (7)	ADJUDICATED OFFENSES	DISPOSITION (57)	Probation / TYC / Other	OFFENSE CODES (60)	(78–80)
/ /					0 1 2
/ /					1 1 2
/ /					2 1 2
/ /					3 1 2
/ /					4 1 2
/ /					5 1 2

Number of alternate placements tried prior to commitment: _____

Is child possible: ☐ escape risk ☐ violence to others ☐ violence to self

After rehabilitation with TYC, any interest from following for return of youth: ☐ family ☐ community

The following are mandatory for admission:

1. Valid commitment order or certified copy
2. Birth certificate or certified copy
3. Probation Officer's Social History (to be accompanied by psychological or psychiatric evaluation, if available, and if completed within the last year)
4. School records
5. Medical Records (including immunization records and any current medication)

Prepared by _____ Date _____

TEXAS YOUTH COUNCIL

COMMITMENT SUMMARY

INSTRUCTIONS FOR COMPLETION OF COMMITMENT SUMMARY:

GENERAL

Purpose: The Commitment Summary will provide identification data and delinquent history on TYC admissions at the time they are committed to TYC's care. This form, together with the Home Visit Summary, will comprise the basis for the Master File on each child.

Completion: This form will be completed by the court or county probation department (unshaded areas) and the TYC Statewide Reception Center for delinquents at Brownwood/Statewide Reception Center for status offenders at Crockett (shaded areas).

Routing: All copies of the Commitment Summary should accompany the child upon admission to the Reception Center/Receiving Center.

INSTRUCTIONS FOR COMPLETION OF COMMITMENT SUMMARY:

UNSHADED AREAS TO BE COMPLETED BY THE COURT OR PROBATION DEPARTMENT:

(Commitment Summary Page 1)

NAME: Name under which the child is being committed. Last name, comma, space, first name, space, middle name and/or titles. (If initial, do not include period)

BIRTHDATE: Month, day and year of birth. (Include left zero).

BIRTH VERIFICATION: Check the appropriate box.

BIRTHPLACE: City, County (or State if not Texas) or Country. Begin county in the column marked with 7.

COMMITMENT COUNTY: Name of the county committing the child. Begin in the column marked with 39.

DATE: Month, day and year of commitment. (Include left zero).

LEGAL GUARDIAN:
- NAME: Full name of the child's legal guardian.
- ADDRESS: Address of the child's legal guardian, zip code and
- PHONE: Phone number of the child's legal guardian (home and work).

LOCATION OF CHILD'S BELONGINGS:
- ADDRESS: Address where the child's belongings have been left.
- PHONE: Phone number of the place where the child's belongings have been left.

NAME OF COURT AND NUMBER: The name and number of the court committing the child.

CAUSE NUMBER: Number assigned by Court to commitment. (DO NOT include Commas OR Hyphens). Begin in column 37.

JUDGE'S LAST NAME: Last name of judge committing the child. Begin in the column marked with 47.

DESCRIPTION OF COMMITTING OFFENSE: Describe briefly the nature of the offense for which the child is admitted this admission.

INSTRUCTIONS FOR COMPLETION OF COMMITMENT SUMMARY:

(Commitment Summary Page 1 cont'd)

ORIGINAL REFERRAL SOURCE:	Check the applicable box.
DATE OF OFFENSE:	Month, day and year of offense for which the child is committed to TYC's care. (Include left zero).
LOCATION:	Check the applicable box Urban- Population is 50,000 and greater. Suburban- Population is between 2,500 and 49,999. Rural- Population is less than 2,500
ALONE:	Was the child alone when committing the offense? Check the applicable box.
FORCE OR WEAPON:	Force or weapon used at time of offense. Check the applicable box.
VALUE OF PROPERTY LOSS:	If Property loss was involved, place the dollar amount right justified, in the space provided. Include left zero. Example: $1,375.25 will coded as $ 0 0 0 1 3 7 5 .00

(Commitment Summary Page 2)

NAME:	The child's name, as shown on page 1.

PLEASE LIST OFFENSES FOR WHICH THE CHILD HAS BEEN ADJUDICATED.
DO NOT INCLUDE THE COMMITTING OFFENSE.

DATE OF REFERRAL:	Month, day and year of offense. (Include left zero).
ADJUDICATED OFFENSES:	For each "DATE OF REFERRAL" briefly state the adjudicated offense.
PROBATION/TYC/OTHER:	Check the appropriate box regarding the disposition of the case.

Please fill out the remainder of page 2 as accurately as possible. Please sign and date the form.

Following their evaluation, the Reception Center staff decides upon an appropriate rehabilitation program for the child and initiates procedures required for proper placement.

Generally speaking, three placement alternatives are available to them: (1) a TYC correctional school, (2) a privately-operated residential contract program, or (3) a TYC-run halfway house. Where possible, an effort is made to place the child in a residential contract program or TYC halfway house with institutionalization being viewed as a last resort. The average Reception Center length of stay for children subsequently placed in one of TYC's correctional schools is approximately ten days. A child for whom placement in a residential contract program or TYC halfway house is deemed appropriate can expect to remain at the Reception Center somewhat longer while such placement is being sought and arranged.

If, while the child is in residence at the Reception Center, a determination is made that he is mentally retarded and would be unable to substantially benefit from the rehabilitation services offered by TYC, the committing court is notified and arrangements are made for the child's immediate return. A full scale I.Q. score of 59 or below is used in conjunction with other clinical criteria in the

determination of mental retardation by the Reception Center staff and the Center's physician and consulting psychiatrist.

B. Correctional Schools: TYC operates five correctional schools for delinquent children: (1) the Brownwood State Home and School, (2) the Gainesville State School, (3) the Giddings State Home and School, (4) the Gatesville State Schools, and (5) the Crockett State School. The Brownwood, Gainesville, and Giddings facilites are co-educational. Proximity to his home is a primary consideration in the placement of a child in one of these three institutions. The Gatesville facility, an all male institution is in effect, a complex of four separate units (i.e., the Sycamore, Terrace, Valley and Hackberry units). Generally, the more aggressive boys committed to TYC for the commission of more serious offenses are assigned to one of the four Gatesville units. The most aggressive and most serious of these are placed in the Hackberry unit. The Crockett State School program, also an all male program except for one campsite for female status offenders, is delivered at a series of wilderness campsites located near the main campus in the Davey Crockett National Forest. The Crockett program emphasizes self-reliance, team work, and the immediate experiencing of the consequences of one's acts. Children with particularly strong needs in these areas are assigned to the Crockett State School.

All institutional campuses are open and unfenced. With the exception of Crockett, living arrangements are of a small dormitory or cottage nature with as much individuality and privacy being accorded each child as is possible. The average length of stay in TYC correctional schools is approximately nine to ten months. The treatment staff at each correctional school features a psychologist, social workers, and other related professionals. Each child is assigned a caseworker. Consulting psychiatrists are available as needed. The rehabilitation program at each school is directed toward assisting children to assume individual responsibility for the future courses of their lives. In development is a comprehensive rehabilitation format designed to assist children in this manner by providing them with specific inter-personal skills and by instilling positive attitudes which will reinforce the use of these skills in a socially acceptable way. Children meet daily in small groups to discuss mutual and individual problems and together they assume the responsibility for the resolution of such problems. Each correctional school is an independent school district with accredited academic programs. These academic programs operate on a four-quarter system and are designed to meet special educational needs. High School diplomas are awarded. All correctional schools have athletic and student government programs and all children are encouraged to participate. In addition to institutional academic offerings, vocational training is available at some facilites. Interaction between children and residents of surrounding communities is encouraged through a variety of volunteer programs.

When the institutional staff has determined that a child has progressed sufficiently in the institution's program that the staff can reasonably predict his continued successful progress in the community, the child's field service counselor is notified and plans are finalized for the child's return to the community. This process is generally initiated 30 days prior to the child's release from the correctional school. The child's field service counselor, in fact, will have been working with the child and his family since shortly after the child's commitment. In most instances, the child will return to his own home and will be under the continued supervision of his field service counselor. In some instances, however, the child may spend some additional time in a residential contract program or TYC halfway house prior to his return home. The need for residential contract or TYC halfway house placement is generally occasioned by an inadequate home environment or some uncertainty on the part of the institutional staff as to the child's ability to succeed in the community without some additional assistance in a less structured residential setting. Children placed in residential contract programs or TYC-run halfway houses are considered to be on field placement and each is on the caseload of a field service counselor.

C. Residential Contract Program: TYC is currently under contract with some fifty to sixty private child care agencies and facilities throughout the state for the provision of residential treatment services for children committed to TYC. Some delinquent children assigned to residential contract programs are placed from the Reception Center, while others, as was indicated in the discussion of TYC correctional schools above, are placed in a residential contract program after a stay in a correctional school. Among the criteria employed in placing a child in a residential contract setting are the capability of the program to meet the child's particular needs, the anticipated ability of the child to progress satisfactorily in a less highly structured community residential setting, and the proximity of the program to the child's own community. All TYC children residing in residential

contract programs are considered to be on field placement and each is assigned a field service counselor who serves the geographic area in which the contract program is located. On a regular basis, TYC conducts fiscal and program audits of residential contract programs to ensure that the treatment services being contracted for are, in fact, being delivered. The average length of stay in residential contract programs is approximately four to six months.

D. TYC Halfway Houses: TYC is currently operating four halfway houses facilities: (1) Nueces House in Corpus Christi, (2) Travis House in Austin, (3) Chelsea Hall in Houston, and (4) Dallas House in Dallas. Other facilities are scheduled to open in the future. Some halfway house residents are placed directly from the Statewide Reception Center, while others, as was indicated in the discussion of TYC correctional schools above, are assigned to a halfway house after a stay in a TYC training school. Generally speaking, halfway house residents are children who do not require the structured environment of an institution, but who do require more structure than is ordinarily afforded in a residential contract setting or their home environments. Other residents, however, are simply hard-to-place children whose own home environments are unsatisfactory and for whom residential contract placements have been difficult to find. All children assigned to TYC halfway houses are considered to be on field placement and each is assigned a field service counselor who serves the geographic area in which the halfway house is located. Halfway house populations range from 14 to 24 and the average length of stay, much like the average length of stay in residential contract programs, is approximately four to six months.

E. Field Placement: While some delinquent children released from TYC correctional schools are placed in residential contract programs or TYC halfway houses, most return immediately to their own homes. These children-unless they are released from the institution at age 18, the age at which TYC must relinquish its custody of a child-return home on field placement supervision. Each is assigned a field service counselor who serves the geographic area in which the child's family resides. The field service counselor, as is indicated in the discussion of TYC correctional schools above, actually begins to work with the child and his family shortly after the child's commitment to TYC.

Upon the child's return to the community, the field service counselor provides close supervision for approximately four months following the child's return to the community. Such supervision includes frequent visits with the child and his family, with school officials, with employers, and with others familiar with the child. Following the initial four-month supervisory period, field placement supervision generally becomes less intense, but home visits as well as visits with school officials, employers and others continue to be conducted periodically. In addition, various psychiatric, psychological, and other supplementary non-residential therapeutic services are purchased by TYC as needed. At a later date, when it is deemed appropriate by the field service counselor, the child may be placed on inactive supervision until the time of his discharge. While most children remain on field placement until age 18, a child may be discharged at an earlier date if he enters the military or moves out of the state with his family. In the latter instance, however, courtesy supervision to age 18 is generally provided by the receiving state in accordance with the Interstate Compact on Juveniles.

All delinquent children on field placement status (i.e., including those in residential contract placements and the TYC halfway houses) are notified in writing of prohibited behaviors and specific behavioral expectations. A child who violates one or more conditions of his field placement may have his placement revoked. This decision rests in the hands of TYC hearing examiners. Such a decision is made at a Field Placement Revocation Hearing held in the child's community or, in some instances, in another community where the violations are alleged to have occurred. The hearing itself is a two-phase proceeding. The objective of the first phase, the fact-finding phase, is to determine whether the alleged placement violations did, in fact, occur. The second phase, the dispositional phase, commences only if it is shown in the fact-finding phase that the child did, in fact, violate a condition of his placement. The objective of the dispositional phase is to determine the appropriate action to be taken on the child's and the community's behalf. One dispositional alternative is the revocation of the child's placement and the subsequent return of the child to the Statewide Reception Center or the particular correctional school from which he has been released. While most field placement violators who have been placed out of a correctional school are returned to the same school, those who commit serious offenses against persons in the course of violating their placements are returned to the Statewide Reception Center for possible assignment to the Gatesville State Schools' Hackberry unit. Throughout the course of a Field

Placement Revocation Hearing the child is represented by an attorney. In some instances, the attorney is retained by the child or his family, while in others, an attorney is provided through the Texas State Bar Association. Revocations of field placement, and all other decisions regarding the placement of children, can be appealed to TYC's Executive Director.

STATUS OFFENDERS: In accordance with the Texas Legislature's 1975 amendment to Article 5143d, Section 12, of Vernon's Civil Statutes, TYC may not place status offenders in programs and facilities also housing delinquents. Status offenders committed to TYC are received at the agency's Crockett Receiving Center located on the campus of the Crockett State School. Residential rehabilitation programs for status offenders are carried on in TYC institutions or in privately-operated residential contract programs. Non-residential rehabilitative efforts are carried on within the confines of TYC field service caseloads. Additional discussion of TYC's reception and rehabilitation programs for status offenders follows:

A. Receiving Center: TYC assumes responsibility for the care, custody, and control of a status offender properly committed to the agency upon the child's arrival at the Crockett Receiving Center. Status offenders are ordinarily transported to the Center by an officer of the committing court or a representative of the committing county's sheriff's department. Upon his arrival at Crockett, the child must be accompanied by: (1) a completed TYC Commitment Summary form, (2) a valid commitment order or certified copy thereof, (4) an updated social history report (to be accompanied by a psychological or psychiatric evaluation, if available, and if completed within the last year), (5) school records and (6) medical records (including immunization records and identification of current medication needs). A copy of TYC's Commitment Summary form and instructions for its proper completion appear herein on pages 702-705. The Receiving Center receives children 24 hours per day, seven days per week. It is preferable, however, for the child to arrive between 8:00 a.m. and 5:00 p.m., Monday through Friday, so that he may be provided with more immediate and complete professional attention.

During his stay at the Receiving Center each child receives complete medical and dental examinations. Psychological evaluations are conducted and, if the need is indicated, a psychiatric evaluation is arranged. In addition, the extent to which a child possesses a number of basic inter-personal skills is assessed. Information provided by the committing court (i.e., completed Commitment Summary form and other documents listed above) is also reviewed by the Receiving Center staff and integrated with the results of tests and interviews conducted at Crockett. Following their evaluation, the Receiving Center staff decides upon an appropriate rehabilitation program for the child and initiates procedures required for proper placement.

Generally speaking, two placement alternatives are availaable to them: (1) a TYC institution, which serves status offenders, or (2) a privately-operated residential contract program. Where possible, an effort is made to place the child in a residential contract program with institutionalization being viewed as a last resort. The average Receiving Center length of stay for children subsequently placed in one of TYC's institutions is approximately ten days. A child for whom placement in a residential contract program is deemed appropriate can expect to remain at the Receiving Center somewhat longer while such placement is being sought and arranged.

If, while the child is in residence at the Receiving Center, a determination is made that he is mentally retarded and would be unable to substantially benefit from the rehabilitation services offered by TYC, the committing court is immediately notified and arrangements are made for the child's immediate return. A full scale I.Q. score of 59 or below is used in conjunction with other clinical criteria in the determination of mental retardation by the Receiving Center staff and the center's physician and consulting psychiatrist.

B. Institutions Serving Status Offenders: TYC operates three institutions which provide services for status offenders: (1) the Corsicana State Home, (2) The West Texas Children's Home located at Pyote, and (3) the Crockett State School. The Corsicana and West Texas facilities are two of TYC's three homes for dependent and neglected children. Since 1975, each has been providing services for status offenders as well. As was indicated in the discussion of TYC's delinquent training schools above, the Crockett State School is one of TYC's five institutions for delinquent children and features an extensive therapeutic wilderness camping program. Since mid-1976, separate campsites have been established for status offenders. The Corsicana and West Texas facilities are co-educational. The Crockett State School receives both male and female status offenders, but houses them at separate campsites. All institutional campuses are open and unfenced. With the exception of Crockett, living arrangements are of a small dormitory or cottage nature with as much individuality and privacy being accorded each child as is possible. The average length of stay for status offenders in TYC institutions is approximately

nine to ten months. The treatment staff at each institution features a psychologist, social workers, and other related professionals. Each child is assigned a caseworker. Consulting psychiatrists are available as needed. The rehabilitation program at each institution is directed toward assisting children to assume individual responsibility for the future courses of their lives. As it does with delinquent children, the Crockett program emphasizes self-reliance, team work, and the immediate experiencing of the consequences of one's acts. Status offenders with particularly strong needs in these areas are assigned to the Crockett State School. In development is a comprehensive rehabilitation format designed to assist children in this manner by providing them with specific inter-personal skills and by instilling positive attitudes which will reinforce the use of these skills in a socially acceptable way. Children meet daily in small groups to discuss mutual and individual problems and together they assume the responsibility for the resolution of such problems. With the exception of Crockett, children attend schools in the surrounding communities and are encouraged to participate in all curricular and extracurricular programs provided. Inter-action between children and residents of surrounding communities is encouraged through a variety of volunteer programs.

When the institutional staff has determined that a child has progressed sufficiently in the institution's program such that the staff can reasonably predict his continued successful progress in the community, the child's field service counselor is notified and plans are finalized for the child's return to the community. This process is generally initiated 30 days prior to the child's release from the institution. The child's field service counselor, in fact, will have been working with the child and his family since shortly after the child's commitment. In most instances, the child will return to his own home. In some instances, however, the child may spend some additional time in a residential contract program prior to his return home. The need for residential contract placement is generally occasioned by an inadequate home environment or some uncertainty on the part of the institutional staff as to the child's ability to succeed in the community without some additional assistance in a less structured residential setting. Children placed in residential contract programs are considered to be on field placement and each is on the caseload of a field service counselor.

C. Residential Contract Program: As was indicated earlier, TYC is currently under contract with some fifty to sixty private child care agencies and facilities throughout the state for the provision of residential treatment services for children committed to TYC. A portion of the total number of residential contract beds available at any given time is reserved for status offenders. In accordance with the Texas Legislature's 1975 amendment to Article 5143d, Section 12, of Vernon's Civil Statutes, these beds are located in facilities which do not house delinquents. Some status offenders assigned to residential contract programs are placed from the Receiving Center, while others, as was indicated in the discussion of TYC institutions serving status offenders above, are placed in a residential contract program after a stay in one of TYC's three institutional facilities which provide programs for status offenders. Among the criteria employed in placing a child in a residential contract setting are the capability of the program to meet the child's particular needs, the anticipated ability of the child to progress satisfactorily in a less highly structured community residential setting, and the proximity of the program to the child's own community. All TYC children residing in residential contract programs are considered to be on field placement and each is assigned a field service counselor who serves the geographic area in which the contract progarm is located. On a regular basis, TYC conducts fiscal and program audits of residential contract programs to ensure that the treatment services being contracted for are, in fact, being delivered. The average length of stay in residential contract programs is approximately four to six months.

D. Field Placement: While some status offenders released from TYC institutions are placed in residential contract programs, most return immediately to their own homes. These children- unless they are released from the institution at age 18, the age at which TYC must relinquish its custody of a child- return home on field placement supervision. Each is assigned a field service counselor who serves the geographic area in which the child's family resides. The field service counselor, as is indicated in the discussion of TYC institutions serving status offenders above, actually begins to work with the child and his family shortly after the child's commitment to TYC.

Upon the child's return to the community, the field service counselor provides close supervision for approximately four months following the child's return to the community. Such supervision includes frequent visits with the child and his family, with school officials, with employers, and with others familiar with the child. Following the initial four-month supervisory period, field placement supervision generally becomes less intense, but home visits as well as visits with school officials, employers, and others continue to be conducted periodically.

In addition, various psychiatric, psychological, and other supplementary non-residential therapeutic services are purchased by TYC as needed. At a later date, when it is deemed appropriate by the field service counselor, the child may be placed on inactive supervision until the time of his discharge. While most children remain on field placement until age 18, a child may be discharged at an earlier date if he enters the military or moves out of the state with his family. In the latter instance, however, courtesy supervision to age 18 is generally provided by the receiving state in accordance with the Interstate Compact on Juveniles.

All status offenders on field placement status (i.e., including those in residential contract placements) are notified in writing of prohibited behaviors and specific behavioral expectations. A child who violates one or more conditions of his field placement may have his placement revoked. Decisions of this nature rest in the hands of TYC hearing examiners. Such a decision is made at a Field Placement Revocation Hearing held in the child's community or, in some instances, in another community where the violations are alleged to have occurred. The hearing itself is a two-phase proceeding. The objective of the first phase, the fact-finding phase, is to determine whether the alleged placement violation did, in fact, occur. The second phase, the dispositional phase, commences only if it is shown in the fact-finding phase that the child did, in fact, violate his placement. The objective of the dispositional phase is to determine the appropriate action to be taken on the child's and the community's behalf. One dispositional alternative is the revocation of a child's placement and the subsequent return of the child to the Crockett Receiving Center. Throughout the course of a Field Placement Revocation Hearing the child is represented by an attorney. In some cases, the attorney is retained by the child or his family, while in others, an attorney is provided through the Texas State Bar Association. Revocations of field placement, and all other decisions regarding the placement of children, can be appealed to TYC's Executive Director.

DEPENDENT AND NEGLECTED CHILDREN: Dependent and neglected children placed with TYC are received and cared for at one of the agency's three homes for dependent and neglected children: (1) the Corsicana State Home, (2) the Waco State Home, and (3) the West Texas Children's Home at Pyote. All TYC institutional campuses for dependent and neglected children are completely open. Living arrangements are of a small dormitory or cottage nature with as much individuality and privacy being accorded each child as is possible. The average length of stay for dependent and neglected children, unlike the average length of stay for delinquents and status offenders, may be quite extended. TYC can maintain custody of dependent and neglected children to age 18.

The staff at each institution features a psychologist, social workers, and other related professionals. Each child is assigned a caseworker. Consulting psychiatrists are available as needed. The rehabilitation program at each institution is directed toward assisting children to assume individual responsibility for the future courses of their lives. In development is a comprehensive rehabilitation format designed to assist children in this manner by providing them with specific interpersonal skills and by instilling positive attitudes which will reinforce the use of these skills in a socially acceptable way. Children meet daily in small groups to discuss mutual and individual problems and together they assume the responsibility for the resolution of such problems. Children attend schools in the surrounding communities and are encouraged to participate in all curricular and extra curricular programs provided. Interaction between children and residents of surrounding communities is encouraged through a variety of volunteer programs. Foster care placements are obtained when appropriate.

COMMUNITY ASSISTANCE PROGRAM AND INTERSTATE COMPACT ON JUVENILES: Two additional programs which are not routine parts of TYC's reception and rehabilitation procedures, but which deserve some discussion, are TYC's community assistance program and its administration of Texas' participation in the Interstate Compact on Juveniles:

A. Community Assistance Program: TYC's community assistance program constitutes the agency's principal effort to reduce the number of commitments to TYC. The community assistance program provides financial support to local agencies in the development of community-based youth services. Approximately 80% of TYC's community assistance funds are distributed to county juvenile probation departments in return for reductions in commitments to TYC. Approximately 20% of the community assistance funds are identified as discretionary funds for selective distribution to private child-caring agencies. Funds channeled to county probation departments are distributed in return for commitment reductions below an established base rate. Base commitment rates have been established for each county based upon the commitment rate from that county over the last ten years and the juvenile population of that county. On a monthly basis, for each commitment below the base rate, the county receives $4,050.00. The $4,050.00 figure is based upon TYC's cost of placing a child in a quality community placement at $15.00 per day, with field placement supervision, for 7.7 months.

Interstate Compact on Juveniles

Background: In the mid-1950's, a number of juvenile justice professionals and other interested individuals concerned with a growing number of juvenile justice problems directly related to the increasingly mobile society began to propose an interstate agreement to cover multi-state problems involving the supervision of juveniles. Among the more prominent of the problems with which they concerned themselves were: (1) the absence of procedures whereby non-delinquent juveniles who ran away from home and crossed state lines could be quickly and safely returned to their home states, (2) the absence of a system permitting continued supervision of juvenile probationers and parolees whose families moved to other states, and (3) the absence of procedures whereby juveniles who absconded across state lines from probation, parole, or institutional supervision could be returned quickly and safely to the supervising jurisdiction.

A short time later, the Council of State Governments began to formally draft a compact to meet these and other insufficiencies. The final draft was completed in 1955. The compact called for each participating state to provide a Compact Administrator who would work with the Compact Administrators of other participating states to procedurally address the problems cited above and others. Each Administrator was to work with his fellow Administrators in other states and with municipal, county, and state juvenile justice officials in his own state in implementing the terms of the Compact. At present, all 50 states and Guam are participants in the agreement.

Texas' formal participation commenced in 1965 when the legislature enacted Article 5143e, Vernon's Civil Statutes. That same legislative enactment now appears as Chapter 25, Title II, of the Family Code. (See Appendices, page 15.46) The legislation calls for the Governor to appoint a Compact Administrator for Texas. In fact, Texas Governors have regularly appointed TYC's Executive Director who has, in turn, delegated the task to a member of his immediate staff.

Purpose: Purposes of the Interstate Compact on Juveniles can be summarized as follows:

To permit out-of-state supervision of a delinquent juvenile who should be sent to some other state after getting into trouble, provided he is eligible for parole or probation;

To provide for return to their home state of runaways who have not as yet been adjudged delinquents;

To authorize agreements for the cooperative institutionalization of special types of juveniles, such as defective delinquents;

To provide for the return of absconders and escapees to the states they left.

Summary: The Compact consists of fifteen articles. (See page 15.46) Four of the articles set forth detailed procedures necessary to carry out the functions listed under Purpose.

Article I sets forth Findings and Purposes which show legislative intent and broad guiding principles.

Article II assures the Existing Rights and Remedies (including parental rights and responsibilities) will not be affected by the Compact. Further, Article II preserves the right to use the informal methods which existed before the Compact was adopted to return non-delinquent runawasy.

Article III defines expressions used in the Compact.

Article IV provides for the return of non-delinquent runaways, either by informal methods or use of the Juvenile Compact Form II (Requisition for Return of Runaway). We recommend that Article IV be used only when there are serious questions as to the legality of a non-delinquent's return. Asylum states should not require the use of Article IV unless the child objects to returning, or if there is question as to the validity of the request for return.

Article V provides for the return of escapees and absconders. Like Article IV, it is designed for cases where there are serious doubts as to the legality of the delinquent's return. When there are no legal obstacles and the juvenile is willing to return, Article VI should be used instead of Article V.

Article VI is used for the return of non-delinquents and delinquents who are willing to return. The procedure is exceedingly simple, and avoids any cloud which might come up relative to the runaway's constitutional rights.

It has been the practice of many states to use informal methods, because of the advantage of simplicity, for returning delinquents who are willing to return voluntarily. It is recommended that Juvenile Compact Form III (Voluntary Return) be used to avoid any constitutional problems which may arise.

Article VII provides a simple, legal method by which juvenile probationers and parolees may be sent to other states for supervision. A juvenile should never be sent before the receiving state has had the opportunity to evaluate the proposed placement and express its approval and willingness to supervise.

When supervision has been arranged, the receiving state becomes the agent of the sending state. The sending state retains jurisdiction over the juveniles, makes all major decisions about his future, and may return him without formalities after consultation between the authorities of the two states.

When a local court intends to discharge a probationer subject to terms of his probation, it should notify the Texas Compact Administrator. When discharge from court jurisdiction is being considered, the receiving state must be informed in order that it may make appropriate comment and do necessary paperwork. No minor should be discharged prior to the expiration of the maximum time permitted for supervision unless the receiving state agrees to such earlier discharge.

No parolee should be discharged without notification to and permission of the receiving state, except at expiration of his maximum parole period, which should be stated on the Interstate Compact Form IV at the time of initial request for supervision.

The receiving state should provide quarterly reports to the sending state, as well as any additional reports requested by the sending state.

Article VIII deals with responsibility for costs of transporting juveniles to and from other states. Should a juvenile become involved in a difficulty in his out-of-state placement, and that state requests his return to Texas, the appropriate agency in the county of the local court's jurisdiction in Texas will be requested to assume the cost of transportation, when not otherwise provided (Article II) by the parents or relatives.

In case of a runaway juvenile, the parent, guardian, or agency entitled to his legal custody, or the court that executed the requisition for his return, shall be responsible for payment of transportation ocsts.

Article IX establishes the policy for detention practices of juveniles coming under the Compact. The Texas Family Code (Title 3, Section 51.12) is also explicit. It guarantees the juvenile taken into custody his rights as well as providing detention for his return to the sending state under appropriate articles of the Compact.

Article X provides that duly constituted administrative authorities of a state party to the Compact may enter into supplementary agreements with any other party state for the cooperative care, treatment, and rehabilitation of delinquent juveniles. This article does not apply to juvenile delinquents who are already out-of-state, nor does this article cover non-delinquents.

Article XI permits the acceptance and utilization of Federal and other aid, grants, and gifts for any of the purposes and functions of the Compact.

Article XII designates the appointment of a Compact Administrator who shall promulgate rules and regulations to carry out more effectively the terms and provisions of the Compact.

Articles XIII, XIV, and XV provide for the execution, renunciation, and severability of the Interstate Compact on Juveniles.

Article XVI- the Optional Runaway Article, to which Texas subscribes along with certain other states, applies to non-delinquent runaways only. It makes it mandatory for the home state to authorize the return of a juvenile within five days after being advised that he has been found in another state.

Sec. 4- Rendition Amendment applies to any juvenile charged with being a delinquent by reason of a violation of a criminal law. All provisions and procedures as outlined in Article V and VI shall apply in returning the juvenile to the requesting state.

Sec. 5- provides for the designation of an officer to serve as Compact Administrator.

Sec. 6- provides for supplementary agreements between the Texas Compact Administrator and Administrators of other states.

Sec. 7. Empowers the Compact Administrator to make or arrange for any payments necessary to discharge the financial obligations imposed upon this state by the compact or by a supplementary agreement made subject to legislative appropriations.

Sec. 8 is for the enforcement of the Compact.

Sec. 9 provides for additional procedures, other than those provided in Article IV and VI for the return of a runaway juvenile.

PROCEDURES AND FORMS

Return of Juvenile Runaway

DEFINITION Juvenile means any person who is a minor under the laws of the state of residence of parents, guardian, person, or agency entitled to the legal custody of the minor.

PETITION FOR REQUISITION TO RETURN A RUNAWAY JUVENILE The parent, guardian, or agency entitled to legal custody of a dependent juvenile may petition to the juvenile court for the issuance of a Requisition for the juveniles return. The petition shall be verified by affidavit and certified document or documents on which the petitioner's entitlement to the juvenile's custody is based attached.

HEARING The judge of the court to which the petition for requisition to return is made may hold a hearing to determine whether the petitioner is entitled to legal custody or whether or not it is in the best interest of the juvenile to return to his home state.

REQUISITION FOR RUNAWAY JUVENILE (FORM I) If the judge determines that the juvenile should be returned, he shall forward three copies of the written requisition to the Compact Administrator in his own state with copies of the petition and certified documents. The Administrator will forward the Requisition to the appropriate agency pursuant to the terms of the Compact.

ORDER OF DETENTION Upon receipt of the Requisition to return a juvenile who has run away the court shall issue an order to any peace officer, or other appropriate person, to take into custody and detain such juvenile. If the judge finds the Requisition to be in order he shall cause such juvenile to be released to the demanding state. The Compact Administrator is notified at this time that the juvenile is in custody awaiting return to his home state.

DETENTION AND HEARING WITHOUT A REQUISITION A juvenile who has run away from another state may be taken into custody without a Requisition and brought before a judge of an appropriate court. The court may appoint counsel or guardian ad litem and determine whether sufficient cause exists to hold the juvenile, not to exceed 90 days, for his own welfare and protection until his return to the home state.

VOLUNTARY RETURN BY RUNAWAY (FORM III) Any juvenile who has run away from his state of legal residence and taken into custody may consent to his immediate return. Such consent may be given by the juvenile and his counsel or guardian ad litem, if any, by executing the form "Consent for Voluntary Return by Runaway" (Form III). When the consent has been duly executed three copies are forwarded to the Compact Administrator. The juvenile may be delivered to an accredited officer of the demanding state or travel unaccompanied with a copy of the consent in his possession.

TRANSPORTATION OF RUNAWAY JUVENILE The parent, guardian, or agency entitled to his legal custody shall be responsible for payment of transportation costs.

Arrangements for travel and airport surveillance are made through the Compact Administrator in the demanding state and the Texas Interstate Compact on Juveniles.

FORM A

PETITION FOR REQUISITION TO RETURN A RUNAWAY JUVENILE

I, _____, being the _____ of _____ do hereby petition _____ for the issuance of a requisition for the return of said juvenile from _____ _____ or from any other place in which (he)(she) may be found. By reason of said juvenile's age, such return is essential.

In support of this petition, and in order that the court may have necessary information pursuant to Article IV of the Interstate Compact on Juveniles, be it known that said juvenile was born on _____, and that said juvenile should rightfully be in my custody and control for the reasons set forth on the attached page. To the best of my knowledge, said juvenile has not been adjudged delinquent, but has run away under the following circumstances and for the following reasons.

_____

_____

_____

Attached are two certified copies of the document or documents verifying petitioner's entitlement to juvenile custody.

Date_____ Signed_____

Address_____

_____

(must be verified by an affidavit)

VERIFICATION

I, the undersigned, say:

I am the petitioner in the petition for requisition to return a juvenile runaway on the reverse page. I have read the foregoing requisition and know the contents thereof, and the same is true to my knowledge, except as to the matters which are therein stated on information and belief, and as to those matters I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct.

_____ _____
Name & Title

_____
Agency

Subscribed and Sworn to before me this _____ day of _____, 19_____.

_____
Notary Public in and for the County of _____

State of _____.

FORM I

REQUISITION FOR RUNAWAY JUVENILE

TO: _____ DATE_____

FROM: _____

RE: _____

This court requisitions the return of _____ in accordance to the Interstate Compact on Juveniles, Article IV, Return of Runaway. Said juvenile is believed to be in your jurisdiction at _____

_____

On the basis of the evidence before it, this court finds said juvenile was born on _____. Juvenile's physical description: Height_____, Weight_____, Eyes_____, Hair_____. Identifying marks or scars: _____

_____

This court further finds that said juvenile should rightfully be in the custody of _____, who is the _____ and who is located at _____ within the territorial jurisdiction of this court; that said juvenile has run away without permission; and that said juvenile's continued absence from rightful custody and control is detrimental to the best interests of said juvenile and the public.

If requisition is honored, please notify _____ _____ when minor will be available for release to our agent.

_____
Judge

Return of Escapee or Absconder

REQUISITION FOR RETURN OF DELINQUENT RUNAWAYS Juvenile Compact Form II may be prepared by the institution or agency having authority over the delinquent juvenile. The Requisition shall be verified by affidavit and accompanied by three copies of the judgment, formal adjudication or order of commitment. Three copies of all materials are forwarded to the Compact Administrator who shall initiate the process of arranging for the juveniles return.

Article V of the Juvenile Compact requires that the juvenile be brought before a judge who may appoint counsel or guardian ad litem, and informed of the demand for his return. If the judge finds the requisition is in order the juvenile may then be returned to the demanding state. When the Texas Compact Administrator has been notified that the Requisition has been honored and the juvenile is available for release, the Administrator of the demanding state will make travel arrangements.

FORM II

REQUISITION FOR ESCAPEE OR ABSCONDER

TO: _____ Date_____
(Appropriate Court or Executive Authority)

FROM: _____

I, _____, requisition the return of _____ born on _____ in accordance to the Interstate Compact on Juveniles, Article V, Return of Escapee and Absconder. Said juvenile was:

____paroled to the custody of the undersigned.
____placed on probation subject to supervision by the undersigned
____committed to _____

and despite applicable provisions of law, said juvenile has:

____escaped
____absconded

and is now believed to be in your jurisdiction at _____

_____

Juvenile's physical description: Height_____, Weight_____, Eyes_____, Hair_____
Identifying marks or scars:_____

Attached are two certified copies of the Judgement, formal adjudication or Order of Commitment verifying juvenile's legal status.

As required by the Interstate Compact on Juveniles, the undersigned hereby presents the following information.

1. Particulars of adjudication as a delinquent juvenile:_____

_____

2. Circumstances of breach of the terms of probation or parole or escapee from institution or agency:_____

_____

_____

Accordingly, the undersigned hereby prays for the return of said juvenile as authorized by the Interstate Compact on Juveniles.

If requisition is honored, please notify _____ by collect telephone call or wire when minor will be available for release to our agent.

Signed_____

Official Position_____

(Requisition must be verified by affidavit. See Article V of the Compact for further details on materials to be included or attached to the form.)

VERIFICATION

I, the undersigned, say:

I am the requisitioner in the above entitled Requisition for Escapee or Absconder on the reverse page. I have read the foregoing requisition and know the contents thereof, and the same is true of my knowledge, except as to the matters which are therein stated on information and belief, and as to those matters I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct:

_____
Name & Title

_____
Agency

Subscribed and Sworn to before me this _____ day of _____, 19____.

_____
Notary Public in and for the County of _____

State of _____.

Voluntary Return of Escapee or Absconder

An escapee or absconder may be taken into custody without a requsition. Step by step procedure, under Article VI, is as follows:

1. The juvenile is taken into custody without a requisition and brought before a judge.
2. The judge must inform the juvenile, in the presence of counsel or guardian ad litem, of his rights.
3. In the presence of the judge, counsel or guardian ad litem, signs Compact Form III (Consent for Voluntary Return).
4. Four copies of the signed consent are filed with the Compact Administrator.
5. The judge orders the juvenile to be delivered to the officers of his home state and gives them a copy of the juvenile's consent. If the juvenile is to return unaccompanied, he is given a copy of the court order.
6. The Compact Administrator is notified immediately that the juvenile has consented to return voluntarily. The demanding state will make all arrangements as soon as possible for the juveniles return.

FORM III

CONSENT FOR VOLUNTARY RETURN BY RUNAWAY,
ESCAPEE OR ABSCONDER

I, _____ recognize that I rightfully belong with _____ in _____ and I voluntarily consent to return there without further formality, either by myself or in the company of such persons as the appropriate authority may appoint for the purpose.

Date_____ Signed_____
(Juvenile)

* *

I, _____ Judge of _____ having informed the juvenile named above of (his)(her) rights under the Interstate Compact on Juveniles prior to the execution of the foregoing consent, do hereby find that the voluntary return of said juvenile to _____ in _____ is appropriate and in the best interest of said juvenile, and do so order such return as provided below:

1. Accompanied by _____
2. Unaccompanied by _____
3. Via _____ Approximate departure date _____.

Date_____ Signed_____
(Judge)

* *

TO BE COMPLETED ONLY IF COUNSEL OR GUARDIAN AD LITEM IS APPOINTED:

I, _____, being the (counsel)(guardian ad litem) of _____, recognize and agree that said juvenile should return to _____ in _____ either unaccompanied or in the company of such person as the appropriate authority may appoint. I hereby consent to such return.

Date_____ Signed_____
(Counsel or guardian ad litem)

(Form will be certified or authenticated in accordance with practice of the court.)

Cooperative Supervision of Probationers and Parolees

Any State party to the Interstate Compact on Juveniles may permit any juvenile on probation or parole to reside in any other state under supervision. Before granting such permission the receiving state shall have the opportunity to make an investigation of the proposed placement as it deems necessary.

When a Texas institution, Probation Department, or Division of Parole refers a juvenile case for placement and supervision in another state the procedure is as follows:

1. A letter requesting the evaluation of the proposed placement and courtesy supervision and reasons for the desired placement.

2. The probation officer's report on the case, (case history or social summary) as detailed as possible. In the case of a juvenile parolee, include institutional pre-parole summary and parole plan, with parole rules and parole record.

3. Pertinent court orders (petition in delinquency, adjudication and probation orders).

4. Compact Form IV and VI should be completed and made a part of the referral packet. It is recommended that at the time the Form VI is signed by the parent or guardian, arrangements for or understanding of financial responsibility to return juvenile if required, be made clear.

5. If the juvenile is a recipient of Social Security funds, survivor benefits, etc., advise the receiving state, giving number of claim and/or claims so that benefits can be transferred to receiving state for the child's use, at the proper time.

CHANNELING REQUESTS: The referral packet, in quadruplet, should be forwarded to the Texas Compact Administrator. One copy will be retained for the files and three copies forwarded to the Compact Administrator of the receiving State. Referral requests should be made as early as possible anticipating thirty to forty days for reply.

ACCEPTANCE: When the investigation has been completed and approved the receiving state will send notification to the Texas Compact Administrator who, in turn, will notify the probation department, institution or parole officer originating the referral.

DEPARTURE: When departure date and mode of transportation for the juvenile to go to the out-of-state placement has been determined, the Texas Juvenile Compact Administrator is to be notified by completing four copies of Compact Form V (Departure Notice). The receiving state should have about five days notice the arrival of the juvenile.

SCHOOL TRANSCRIPTS: School transcripts and records should be sent at this time in order to facilitate the child's entry into the school program.

CONDITIONS OF PROBATION OR PAROLE The terms of probation or parole are set by the sending state. Day by day operational matters are determined by the receiving state. Any special conditions included in the court's probation order, or as conditions of parole, is binding and should be enforced in the receiving state.

The receiving state shall provide standards of supervision that prevail for its own delinquent juveniles released on probation or parole. Also, progress reports will be furnished the sending state each quarter. The progress report, in quadruplicate, is submitted to the Compact Administrator in the receiving state.

VIOLATIONS OF THE CONDITIONS OF PROBATION OR PAROLE

If the Interstate probationer or parolee is in violation of his compact agreement, he may be detained in a juvenile detention center pending disposition of charges and decision made whether to retain him in placement, alternate placement, or return to sending state. Any charges pending in the Juvenile Court in the receiving state must be disposed of by dismissal or a judgment before arrangements can be concluded for returning the juvenile to the sending state.

Any charge of parole violation is subject to the prescribed procedure for parole revocation. Copies of the hearing officers report along with offense reports, or, where applicable, copies of court actions, are forwarded to the Compact Administrator.

In the event the juvenile is unable to make an adequate adjustment in the placement (other than violation of conditions) or other circumstances beyond the juvenile's control which would warrant removal from the placement, advise the sending state through the Interstate channels immediately, with recommendation for alternate placement or return to the sending state.

TERMINATION

At any time within the maximum limits of the prescribed supervision period the supervising probation or parole officer may recommend the sending state termination of supervision, stating the reasons therefor. However, termination of supervision and closing of the case is not done until written permission is received from the sending state.

FORM IV

PLACEMENT INVESTIGATION AND SUPERVISION REQUEST

( ) PAROLE ( ) PROBATION

TO: DATE:

RE: FILE NO.

SEX: RACE: D.O.B.

Maximum expiration date of court jurisdiction or commitment:

Earliest date eligible for discharge:

Ward's current status:

1. Detained at
2. Not in Custody ( )
3. Tentative Arrival Date:
4. Already residing in your State ( )

We are requesting an investigation of the home of:

Name: Relationship:

Address: Telephone:

Prospective placement confirmed willingness to assist ward? Yes ( ) No ( )
Foster home payments will be paid, if required? Yes ( ) No ( )

Attached are: Triplicate current case reports, background case materials, (including diagnostic tests, treatment plans, psychological or psychiatric reports, copy of school transcripts, etc.), record of adjudication and pertinent court orders. Application for Compact Services and Memorandum of Understanding and Waiver.

Your prompt attention will be appreciated. Please send requested reports to:

_____

_____

FOR THE COMPACT ADMINISTRATOR

By_____

TITLE_____

FORM V

REPORT OF SENDING STATE UPON PAROLEE OR PROBATIONER
BEING SENT TO ANOTHER JURISDICTION

TO:_____ DATE_____

FROM:_____

RE:_____ _____ NO._____

Parole_____Probation_____

The above mentioned (will depart) (has departed) from_____

by_____ on_____
Method of Transportation Date

and was instructed to report (in person) (by letter) to:

_____

_____

_____

Enclosed please find: (check appropriate items)

_____Certificate of parole

_____Probation or parole agreement

_____Memorandum of understanding and waiver

_____Other material described below

_____

_____

_____

Please acknowledge receipt of this material and send arrival report as soon as possible.

Signed_____

Title_____

FORM VI

MEMORANDUM OF UNDERSTANDING AND WAIVER

Sending State_____ Receiving State_____

I, _____ realize that the grant of (parole) (probation) and especially the privilege to leave the State of _____ to go to the State of _____ is of great benefit to me. In return for these advantages, I promise:

1. That I will make my home with _____ at _____ until a change of residence is duly authorized by the proper authorities of the receiving state.

2. That I will obey and live up to the terms and conditions of (parole) (probation) as fixed by both the sending and receiving state.

3. That I will return at any time to the sending state if asked to do so by the (parole) (probation) authorities in that state. I further understand that if I do not obey or live up to these promises, I may be returned to the sending state.

I have read the above or have had the above read and explained to me, and I understand the meaning of it and agree thereto.

Witnessed by:_____ Signed_____

Date_____

I, in my capacity of (parent) (guardian) of _____ do approve of and subscribe to the above memorandum of understanding and hereby waive any right which I may have to contest the return of the juvenile referred to herein in the sending state from any state or jurisdiction, within or without the United States, in which (he) (she) may be found. I also undertake to cooperate with the supervising authorities and to assist them in securing the return of the juvenile referred to herein to the sending state whenever, in their judgment, such return may be necessary or desirable.

Witnessed_____ Signed_____

Date_____

On the _____ day of _____ 19___, permission was granted to the above juvenile and (parent) (guardian) to have said juveniles reside in the State of _____ and to be supervised by_____

Signed_____

In the case of parole, to be signed by the Compact Administrator or other appropriate official. In the case of probation, to be signed by the appropriate judge.

Texas Department of Mental Health and Mental Retardation

Introduction: The Texas Department of Mental Health and Mental Retardation was created by the Legislature in 1965 to conserve the mental health of all the state's citizens and help the mentally retarded achieve their maximum potential. A nine member Board, appointed by the Governor, sets the Department's goals and operating policies and appoints a Commissioner to administer the programs. Programs are directed to preserving or enhancing the personal, social, physical and economic resources of a large group of handicapped persons. Many of its functions also are directed to public safety through the custody of anti-social or dangerous persons. A number of its programs are restorative or rehabilitative in the form of training and education of the individual. Some activities are, strictly speaking, health activities. Educational activities include the operation of social independent school districts--one in each state school for the mentally retarded.

The Department has statewide responsibility for the development, fiscal support and supervision of community-based programs offering services to Texas citizens their home communities. This includes mental health services and programs for the mentally retarded, the mentally impaired aged, the drug addict and the alcoholic. An array of public education and information services is provided directly through the Department's own planning, funding, auditing, consultation and assistance programs.

Facilities: The Department supervises:
Mental hospitals located in Austin, Big Spring, Kerrville, Rusk, San Antonio, Terrell, Vernon and Wichita Falls.

State schools for the retarded located in Abilene, Austin (2), Brenham, Corpus Christi, Denton, Fort Worth, Lubbock, Lufkin, Mexia, Richmond and San Angelo.

A comprehensive mental health and mental retardation center, located in Harlingen, to serve the Rio Grande Valley area.

Human development centers located in Amarillo, Beaumont and El Paso. The facilities offer a wide range of day care and respite services for the mentally impaired.

The Texas Research Institute of Mental Sciences at Houston, nationally-recognized research and professional training facility that also provides patient care services for many residents of Harris County.

A rehabilitation and recreation center located near Leander, north of Austin, providing therapy programs involving overnight camping, outdoor sports, swimming, boating and fishing.

The Department also cooperates with and supports Texas' 27 community mental health and mental retardation centers. The centers are governed by local boards of trustees and deliver comprehensive services to the mentally ill and the mentally retarded close to their homes and families. The centers are located in Abilene, Amarillo, Austin, Beaumont, Brownwood, Bryan, Corpus Christi, Dallas, Denison, Edinburg, El Paso, Fort Worth, Galveston, Houston, Lubbock, Lufkin, Marshall, Midland, Plainview, San Angelo, San Antonio, Temple, Texarkana, Tyler, Victoria and Wichita Falls.

Admission of Children: Admission of a mentally ill or mentally retarded child to the proper facilities of the Department of Mental Health and Mental Retardation is ofen a perplexing area of responsibility for the juvenile probation officer. Pages 13.01 - 13.17 of this Manual set out the bare-bones procedures established by the Family Code, The Texas Mental

Health Code and the Mentally Retarded Persons Act. Putting these procedures into practical application, however, requires knowledge of and a working relationship with the M.H.M.R. facilities available in a particular locality.

While the Department of Mental Health and Mental Retardation has established a Task Force to develop a statewide plan for the delivery of services to juveniles, its work has not progressed to the point of offering practical assistance to the juvenile probation officer.

Procedures for admission to local services have been worked out and reduced to writing in some localities. The forms used in Harris County for mental retardation admissions are included in the Forms section of this Manual as examples on pages 14.101 through 14.109.

Admission to state facilities is governed by the rules of the Department of Mental Health and Mental Retardation found on pages 15.58 - 15.65. The forms prescribed by these rules are found on pages 14.110 - 14.122

Texas Judicial Council Juvenile Probation Statistics Project

Introduction: The Texas Judicial Council, a state agency, was established as the Texas Civil Judicial Council in 1929 ". . .to make a continuous study of and report upon the organization, rules, procedure and practice of the judicial system of the State of Texas, the work accomplished and the results produced by that system and its various parts, and methods for its improvement. . ." [1]

At the request of the Criminal Justice Division, Office of the Governor, the Texas Judicial Council has the responsibility for collecting statistics and other information concerning the work of probation departments. To accomplish this, monthly report forms were designed by the Texas Judicial Council through the cooperation of chief juvenile probation officers, juvenile judges, the Texas Youth Council and the Criminal Justice Division of the Office of the Governor.

Purpose: Well-kept records provide uniform and useful data which can describe statewide juvenile justice problems and the resources available to deal with the problems.

The data collected is particularly useful to the probation department administrator and field probation worker because it describes statistically the children handled on a monthly basis. It is only through statistics such as those required in the monthly report that the volume of work accomplished by the department can be portrayed to the juvenile boards or juvenile judges and the general public.

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[1] Article 2328a V.A.T.S.

TJC-12-76
10000

TEXAS JUDICIAL COUNCIL

Report for the month of:

_____ 19____

County of: _____

PAGE 1.

OFFICIAL JUVENILE PROBATION MONTHLY REPORT

CHIEF JUVENILE
PROBATION OFFICER:

_____
(Name)

Prepared By: _____
(Name)

_____
(Title)

_____
(Area Code) (Phone Number)

The Attached Report Is A True And Accurate
Reflection Of The Records Of This Office

_____
(Signature of Chief Juvenile Probation Officer or designated Juvenile Official)

☐ Check if more monthly forms are needed
☐ Check if more "referral worksheets" are needed

For other information please write to the above address or call 512/475-2421

PROBATION DEPARTMENT MONTHLY ACTIVITY

ITEM

1. Please enter the total number of referrals to your Juvenile Probation Department during this reporting month. If a child was referred more than once during this reporting month, count each referral separately for THIS ITEM AND ITEM (3). ☐

2. Please enter the number of **children** referred to your Juvenile Probation Department during this reporting month. (Count only the FIRST REFERRAL OF ANY CHILD HANDLED MORE THAN ONCE during this YEAR.) ☐

3. Please enter the number of referrals "disposed of" with an UNOFFICIAL DISPOSITION (resolved without court action). ☐

Please return this form no later than 20 days following the end of the month reporting, to: **Texas Judicial Council, P.O. Box 12066, Austin, Texas 78711**

Report for the month of:

_____ 19____

County of: _____

Table 1: Prior and Non-Prior Status of Referrals Received During Reporting Month.

Enter no. of referrals that have not been referred to your department or court at anytime in the past.	Enter no. of referrals that have been referred to your department or court previously.	Total

(Note: This total should be the same figure as item 1, Page 1.)

Table 2: Prior and Non-Prior Adjudication of Referrals Received During Reporting Month.

Enter no. of referrals that have not been adjudicated a "delinquent" or "C.I.N.S." at any time in the past.	Enter no. of referrals that have been adjudicated a "delinquent" or "C.I.N.S." previously.	Total

(Note: This total should be the same figure as item 1, Page 1.)

Table 3: Source of Referrals

Police Agency	Social Agency	Parent	School	Other	Total

(Note: This total should be the same figure as item 1, Page 1.)

Table 4: Family Status of Referrals

Lived with Both Parents	Lived with One Parent	Lived with Relative	Lived with Adoptive Family	Lived with Foster Family	Other	Total

(Note: This total should be the same figure as item 1, Page 1.)

Table 5: Residence of Referrals

County Resident	Out of County	Out of State	Out of U. S. A.	Total

(Note: This total should be the same figure as item 1, Page 1.)

Table 6: School Status and Academic Progress of Referrals

	HIGHEST GRADE COMPLETED							Total
	6th. Grade or Below	7th. Grade	8th. Grade	9th. Grade	10th. Grade	11th. Grade	12th. Grade	
In School								
Dropped Out of School								
Suspended or Expelled from School								
Total								

(Note: This total should be the same figure as item 1, Page 1.)

FOR USE BY TEXAS JUDICAL COUNCIL

1	2	3	4	5	6	7	8	11 - 15	16 - 20	21 - 25	26 - 30	31 - 35	36 - 40	41 - 45	46 - 50	51 - 55	56 - 60	61 - 65	66 - 70	71 - 75	76 - 80

7.27

Report for the month of:

_____ 19. ____

County of: _____

Table 7: Race-Ethnic background, Sex and Alleged Offense of Referrals. (If a referral has allegedly committed more than one offense in a criminal episode, count only the most serious Offense.)

	ALLEGED DELINQUENT BEHAVIOR								ALLEGED C.I.N.S. BEHAVIOR					
	Homicide	Rape	Robbery	Aggravated Assault	Burglary	Theft	Controlled Substances	All Other Delinquent Offenses	School Attendance	Liquor Law Violation	Inhalant	Runaway	All Other C.I.N.S. Behavior	Total
White Male														
White Female														
Black Male														
Black Female														
Spanish Surname Male														
Spanish Surname Female														
All Other Male														
All Other Female														
Total														

(Note: This total should be the same figure as Item 1, Page 1.)

Table 8: Race-Ethnic background, Sex and Age of Referrals

	10 Years	11 Years	12 Years	13 Years	14 Years	15 Years	16 Years	17 Years	Total
White Male									
White Female									
Black Male									
Black Female									
Spanish Surname Male									
Spanish Surname Female									
All Other Male									
All Other Female									
Total									

(Note: This total should be the same figure as Item 1, Page 1.)

Note: The distribution of figures in the total columns of Table 7 and 8 should be identical.

FOR USE BY THE TEXAS JUDICIAL COUNCIL

-				-		-		11 - 15	16 - 20	21 - 25	26 - 30	31 - 35	36 - 40	41 - 45	46 - 50	51 - 55	56 - 60	61 - 65	66 - 70	71 - 75	76 - 80
1	2	3	4	5	6	7	8														

Report of the month of:
____________ 19____
County of: ____________

Table 9: Referrals detained in a secure detention facility (admitted during reporting month)

	ALLEGED DELINQUENT BEHAVIOR								ALLEGED C.I.N.S. BEHAVIOR					Total
	Homicide	Rape	Robbery	Aggravated Assault	Burglary	Theft	Controlled Substances	All Other Delinquent Offenses	School Attendance	Liquor Law Violation	Inhalants	Runaway	All Other C.I.N.S.	
White Male														
White Female														
Black Male														
Black Female														
Spanish Surname Male														
Spanish Surname Female														
All Other Male														
All Other Female														
Total														

Note: This total will not be total Referrals

LENGTH OF DETENTION

Table 10: If you reported in Table 9 that Referrals were detained in Secure Detention Facilities please enter the number of referrals detained in the following categories:

	Length of Detention: ALLEGED DELINQUENT BEHAVIOR					Length of Detention: ALLEGED C.I.N.S. BEHAVIOR					Total
	Less Than 24 Hours	At Least 1 Day But Not More Than 3 Days	At Least 3 Days But Not More Than 5 Days	At Least 5 Days But Not More Than 10 Days	More Than 10 Days	Less Than 24 Hours	At Least 1 Day But Not More Than 3 Days	At Least 3 Days But Not More Than 5 Days	At Least 5 Days But Not More Than 10 Days	More Than 10 Days	
Number of Referrals →											

Note: This total should be the same figure as total Table 9

FOR USE BY TEXAS JUDICIAL COUNCIL

1 2 3 4 5 6 7 8	11 - 15	16 - 20	21 - 25	26 - 30	31 - 35	36 - 40	41 - 45	46 - 50	51 - 55	56 - 60	61 - 65	66 - 70	71 - 75	76 - 80

INSTRUCTIONS FOR STATISTICAL REPORTING OF OFFICAL JUVENILE PROBATION MONTHLY REPORTS

Introduction

An official juvenile probation monthly report is to be prepared and turned in on a monthly basis by the 20th day following the end of the reporting month.

The following instructions have been written to provide standardized guidelines in completing the monthly reports.

What Constitutes a Referral? A referral has occurred and a referral should be counted when the matter of a law violation or other misconduct by a child of juvenile age (10 through 16) has been turned over and accepted by your juvenile probation department for a decision by you as to what action is to be taken regarding the child. Every referral is counted only when there is some contact by visit or interview with the child and/or parents.

Do not count as a referral one referred to another agency without consideration of possible action by the court or probation office, nor one in which a letter of warning is sent to the parent without any personal contact with the child and/or parents.

The following should be counted as referrals:

a. "Referrals" from law enforcement agencies; social agencies; parents; school; and other legitimate sources.

b. "Probation Violation" if, and only if, it is presented to court for disposition.

The following should not be counted as referrals.

a. Children less than 10 years of age.

b. Youths who are above juvenile age will not be included as referrals *IF* the true age was discovered and the youth was turned back to the referring source or to adult authorities promptly on the same date as the referral, the interpretation being that the attempted referral was rejected by the Juvenile Department.

c. Complaints from parents, relatives, neighbors, school authorities, or social agencies, that are given directly to the probation officer (not through a police agency) regarding non-criminal misconduct of juveniles who are already under the "active" supervision of a probation officer, unless a new court order results.

d. A detention facility admission following a court commitment or custody placement order pending delivery as directed by the court order.

e. A detention facility admission under an Order of Immediate Custody.

f. Being returned to the detention facility following an escape from the detention facility. The child is being returned for disposition of the referral for which he was originally detained.

g. Probation violations which are not presented for court hearing.

h. "Protective Custody" detainment.

i. "Material Witness" detainment.

j. Being housed overnight in the detention facility as an accommodation while in transit in the custody of an out-of-county officer.

k. Out-of-county investigations, made for the purpose of providing information to another juvenile department or court, and which does not result in your juvenile department assuming supervision of the child or otherwise making the disposition regarding him or her.

l. Mail-in reports from law enforcement agencies in which no action is taken other than filing reports.

Who Prepares the Monthly Reports? The chief juvenile probation officer or designated representative of the juvenile court is responsible for preparing and forwarding the monthly report. If your department has jurisdiction in more than one county, please forward a separate report for each county. If there is not a juvenile probation department, the person(s) directed by the juvenile court to handle juvenile matters is responsible for the monthly reports.

When is the Monthly Report to be Turned In? One report per month shoud be prepared on the printed forms which have been provided to you. The completed form should be mailed to the Texas Judicial Council before the 20th day of the month following the reporting period. (Example: January report should be mailed before February 20th)

Where are the Monthly Reports to be Sent?

Please mail your monthly reports to:

Texas Judicial Council
308 West 15th Street, Suite 312
Austin, Texas 78701
512/475-2421

How are the Monthly Reports to be Filled Out? Please type or print legibly in all applicable spaces. Each monthly report consists of (4) four pages.

Page 1

First, please fill in the month and year you intend the report to cover and the name of the county you are reporting for in the outlined box at the upper right hand corner of the page.

Second, please complete all the information in the outlined box-left hand side of the page. When you have completed the rest of the report, affix signature of the chief juvenile probation officer.

a. If there is not a chief juvenile probation officer please include the name of the person who has been designated by the juvenile judge to complete the report.

b. If there has been no juvenile activity, please forward the report with such indicated.

On page one in the outlined box -right of center, enter the appropriate figures. Please take note of the instructions for each Item below.

ITEM 1:

Please enter the number of referrals to your department during the reporting month. If a child was referred more than once during the reporting month, count each referral separately.

Methods of handling specific situations:
If a child has committed two or more alleged offenses that may be considered part of the same situation or episode, reported to the probation office or court at about the same time and therefore, considered at the same time, these offenses should be considered a single referral. For example, a child who runs away from home may be truant from school at the same time; this should be counted as only one referral. The situation in which a child has broken into a store and stolen a car in the same episode should be counted as only one referral.

If a child is referred at 8:00 a.m. for theft, is released and then referred for another theft, this child should be counted as two referrals.

If a child is referred and then admits committing three offenses at different periods in the past, this child should be counted as one referral, the interpretation being that all of the offenses are considered by the probation officer at one time.

ITEM 2:

Please enter the number of children referred and accepted by your juvenile probation department or juvenile officer.

EXPLANATION:
Item 2 asks for the actual number of different children referred. For example, even if a particular child was referred more than one time during the calendar year, he is counted *ONLY ONCE* in this number.

ITEM 3.

Please enter the number of referrals "disposed of" with an unofficial disposition.

Definition: "disposed of":
The term "disposed of" means for this report, that some definite action has been taken or that some plan or treatment has been decided upon by the probation department or representative of the juvenile court. *IT DOES NOT MEAN THAT THE MATTER IS "CLOSED" IN THE SENSE THAT ALL CONTACT WITH THE CHILD OR HIS/HER FAMILY HAS CLOSED.*

The following should be counted as unofficial dispositions.

1. Referrals "disposed of" with brief service at intake. (released to parents with no further planned action)

2. Referrals "disposed of" through informal advisement. (informal probation)

3. Referrals "disposed of" through non-judicial means.

Please Note: The number you report in Item 3 should include any referrals "disposed of" unofficially during the reporting month. For example, if a child was first handled in December, but "disposed of" in January by putting the child on informal probation, the unofficial disposition should be counted in your January report.

Instructions for Page 2 Through 4:

Every question in the remaining pages of the report requests information about the total number of referrals you have had for the reporting month (Item 1, page 1). Tables have been designed so that the number of referrals can be placed under the appropriate heading.

For example, one of the first tables asks for the number of referrals you received this month with no prior record of a referral and the number of referrals who had been referred on one or more occasions. As an example, assume the total number of referrals for the month was 30-this would mean that the numbers under the headings would add across to 30.

Table 1: Prior and Non-Prior Status of Referrals

No Prior Referral	One or More Prior Referrals	TOTAL
20	10	30

(Note: this total should be the same figure as Item 1, page 1)

In the above example, 20 referrals had not been previously referred and 10 referrals had been previously referred. The total equals Item 1, page 1.

The same basic procedure should be followed in each table. Pay particular attention to the notes underneath each table.

TABLE 1: PRIOR AND NON-PRIOR STATUS OF REFERRALS

Under the heading *NO PRIOR REFERRAL* indicate the number of referrals who have not ever before been referred to your juvenile probation department or juvenile court.

Under the heading *ONE OR MORE REFERRALS* indicate the number of referrals who have been referred to your juvenile probation department or juvenile court, at least one time during or prior to this reporting month.

TABLE 2: PRIOR AND NON-PRIOR ADJUDICATION OF REFERRALS

First, please note that the total of Table (2) should equal the figure in Item (1), page 1.

Definition: Adjudication--Sec. 54.03, Family Code "A child may be found to have engaged in delinquent conduct or conduct indicating a need for supervision only after an adjudication hearing in accordance with the provisions of this section. . ."

For purposes of this report, no prior, or one or more prior adjudication refers to a case in which a finding of delinquency or child in need of supervision (C.I.N.S.) was found.

Under the heading *NO PRIOR ADJUDICATION* indicate the number of referrals who have not been adjudicated a delinquent or C.I.N.S. at any time in the past.

Under the heading *ONE OR MORE ADJUDICATION* indicate the number of referrals who have been adjudicated a delinquent or C.I.N.S. in the past.

TABLE 3: SOURCE OF REFERRALS

First, please note that the total of Table (3) should equal the figure in Item (1), page 1.

Under the appropriate heading indicate the source of referrals.

Under the heading *POLICE AGENCY* include referrals from law enforcement agencies (examples: sheriff's departments, D.P.S. etc.)

Under the heading *SOCIAL AGENCY* include the number of referrals that you received from any public or private agency. (example: MH/MR, Child welfare, Salvation Army, etc.)

Under the heading *PARENT* include referrals from parents. (do not include referrals from a "guardian" or "custodian")

Under the heading *SCHOOL* include referrals from school authorities.

Under the heading *OTHER* include referrals from any other source. (include referrals from "guardians" and "custodians")

TABLE 4: FAMILY STATUS OF REFERRALS

First, please note that the total of Table (4) should equal the figure in Item (1), page 1.

Under the appropriate heading indicate the family status of the referrals.

Definition: Family Status
Family status in this report means living arrangement at the approximate time of referral.

Under the heading *LIVED WITH BOTH PARENTS* indicate the number of referrals who were living with both parents. Include situations in which a referral is living with step-parent.

Under the heading *LIVED WITH ONE PARENT* indicate the number of referrals who were living with one parent.

Under the heading *LIVED WITH RELATIVE* indicate the number of referrals who were living with a relative(s) other than a parent.

Under the heading *LIVED WITH ADOPTIVE FAMILY* indicate the number of referrals who were living with an adoptive family.

Under the heading *LIVED WITH FOSTER FAMILY* indicate the number of referrals who were living with a foster family.

Under the heading *OTHER* indicate the number of referrals who were living in other arrangements. For example, a child living alone for an extended period of time with the permission of parents or guardian would be included under *OTHER*. If however, the child was a runaway, living alone or with peers, include this referral under the heading which identifies the living arrangement prior to running away.

TABLE 5: RESIDENCE OF REFERRALS

First, please note that the total of Table (5) should equal the figure in Item (1), page 1.

Under the appropriate heading indicate the residence of the referrals.

Methods of handling specific situations:
Count each referral under one category. For example, if a referral was from Out of State he/she should be counted under the heading Out of State and not also included Out of County.

In a situation in which the family is constantly moving (e.g. military) consider the family residence of the referral as the most recent location or place of residence.

TABLE 6: SCHOOL STATUS AND ACADEMIC PROGRESS OF REFERRALS

First, please note that the total of Table (6) should equal the figure in Item (1), page 1.

In this table indicate the highest grade completed by the referral and the status of the referral in school at the time of referral.

For instance, if a referral was attending 8th grade but was suspended at the time of referral, you should include the referral under the heading 7th Grade-Suspended or Expelled from School. If a referral was in the 9th grade at the time of referral and *IN SCHOOL*, this would be indicated by a mark under "8th Grade"-the highest grade completed would be the 8th grade which would be aligned with the column on the left-*IN SCHOOL*.

TABLE 7: RACE-ETHNIC BACKGROUND, SEX AND ALLEGED OFFENSE OF REFERRALS (if a child has allegedly committed more than one offense in a criminal episode, count only the most serious offense)

EXPLANATION:
In this table, you are requested to indicate the alleged offense or reason of the referral and the race-ethnic background of each referral.

First, please note that the total of Table (7) should equal the figure in Item (1), page 1.

Definition: Race-ethnic groups
The ethnic groups utilized in this report are defined by the U.S. Equal Employment Opportunity Commission and are described below. For purposes of this report, a child may be included in the group to which he or she appears to belong, or is regarded in the community as belonging.

I. Race-Ethnic Groups

a. "White": persons of Indo-European descent, including Pakistani and East Indian.

b. "Black": persons of African descent as well as those identified as Jamaican, Trinidadian, and West Indian.

c. "Spanish Surnamed": all persons of Mexican, Puerto Rican, Cuban, Latin American or Spanish descent.

d. "Other": American Indian and others not included by the categories above.

OFFENSES:

Table (7) is divided into two main categories-delinquent and children in need of supervision (C.I.N.S.) Delinquent offenses include those cited in Section 51.03(a) Family Code. C.I.N.S. behaviors includes those cited in Section 51.03(b) Family Code.

Under the category *DELINQUENT* there are eight headings which are used as descriptive headings to include any referrals for delinquent conduct. Under the category C.I.N.S. there are five headings which are used as descriptive headings to include any referrals for C.I.N.S. behavior.

GENERAL:

Under the heading *DELINQUENT* include any alleged offense which is a class B misdemeanor or more serious.

Under the heading *HOMICIDE* indicate the number of referrals who were referred for committing an offense cited in Chapter 19, Texas Penal Code.

Under the heading *RAPE* indicate the number of referrals who were referred for committing an offense cited in Chapter 21, Texas Penal Code, and which is a class B misdemeanor or more serious.

Under the heading *ROBBERY* indicate the number of referrals who were referred for committing an offense cited in Chapter 29, Texas Penal Code and which is a class B misdemeanor or more serious.

Under the heading *AGGRAVATED ASSAULT* indicate the number of referrals who were referred for committing an offense cited in Chapter 22, Section 22.02, Texas Penal Code.

Under the heading *BURGLARY* indicate the number of referrals who were referred for committing an offense cited in Chapter 30, Texas Penal Code, and which is a class B misdemeanor or more serious.

Under the heading *THEFT* indicate the number of referrals who were referred for committing an offense cited in Chapter 31, Texas Penal Code, and which is a class B misdemeanor or more serious.

Under the heading *CONTROLLED SUBSTANCES* indicate the number of referrals who were referred for committing an offense cited in the Texas Controlled Substance Act, and which is a class B misdemeanor or more serious.

Under the heading *ALL OTHER DELINQUENT OFFENSES* indicate the number of referrals who were referred for committing an offense cited not included in other headings-and which is a class B misdemeanor or more serious.

GENERAL:

Under the category C.I.N.S include any offense or behavior which is considered a class C misdemeanor or other conduct indicating a need for supervision.

The headings included under this category are merely descriptive. For instance, although there is not a state law concerning inhalents, in many cities there are ordinances that make the use of inhalents illegal. Therefore, include under the heading *INHALENTS* the number of referrals who were referred for sniffing glue, gas, paint or other toxic substance even though the official referral could have been Public Intoxication.

Under the heading *SCHOOL ATTENDANCE* indicate the number of referrals who were referred for conduct which violates Section 51.03(b)(2), Texas Family Code.

Under the heading *LIQUOR LAW VIOLATION* indicate the number of referrals who were referred for liquor law violations. Include referrals for D.W.I. (Section 51.03(b)(4), Texas Family Code).

Under the heading *INHALENTS* indicate the number of referrals who were referred for sniffing glue, gas, paint or other toxic substances.

Under the heading *RUNAWAY* indicate the number of referrals who were referred for runaway. (See Sec. 51.03(b)(3) Family Code).

Under the heading *ALL OTHER C.I.N.S.* indicate the number of referrals who were referred for an offense or conduct not included in other headings. (For example, theft under $5 is a class C misdemeanor, this offense should be reported in *ALL OTHER C.I.N.S.*)

Methods of handling specific situations:
If a referral was referred for more than one offense, count only the most serious for this report. For example, a referral for theft and truancy should be counted as a referral for theft. In the event a referral is truant and runaway, count the most serious offense in terms of the particular aspects of the case.

Generally, the most serious offenses are listed from left to right on the table. The judgment of seriousness should be made by you.

The procedure for completing the table is identical to previous tables.

TABLE 8: RACE-ETHNIC BACKGROUND, SEX AND AGE OF REFERRALS

First, please note that the total of Table (8) should equal the figure in Item (1), page 1.

Under the appropriate heading indicate the race, sex, and age of the referrals at the time of the referral.

TABLE 9: REFERRALS DETAINED IN A SECURE DETENTION FACILITY
(admitted during reporting month)

First, please note that the total of Table (1) will not necessarily equal total referrals.

EXPLANATION:
Table (9) asks for the number of referrals admitted to a secure detention facility designated by the juvenile board.

The number of referrals detained should include the number of referrals admitted during the reporting month.

For example, assume that your department has 30 referrals for the month of January. Suppose 10 referrals were detained, the total of Table (9) should then be 10. Indicate what offense the referral was detained for and the sex-ethnic background of the referral.

Please Note:
If, for example, you receive and accept referrals at the end of the month (e.g. January 30th) and they are not detained until February, count the referral in your January report, but include them in detention in your February report.

If no referrals were detained, indicate by placing a zero (0) in the total column.

Again, the procedures for completing the table is the same as previous tables.

TABLE 10: LENGTH OF DETENTION

First, please note that the total of Table (10) should be the same figure as the total in Table (9). If no referrals were detained, place a zero (0) in the total column.

EXPLANATION:
This table asks for the length of time that the referrals who were accepted by your department during the reporting month were detained.

Table 10 is divided into two categories with 5 headings under the category *DELINQUENT* and 5 headings under the category C.I.N.S.

Under each category is a length of time which identifies how long the referral was held. These lengths are based on the exact number of hours in the detention facility, 24 hours or any fraction thereof counting as a day.

For example, just one hour over 3 days (73 hours) is an hour in the fourth day and should be indicated in the column *AT LEAST THREE DAYS BUT NOT MORE THAN FIVE DAYS.*

Under the heading, *LESS THAN 24 HOURS* indicate the number of referrals detained for any fraction of 24 hours.

Fill-in the remaining headings with the appropriate number of referrals.

To complete the table: first, count the number of referrals detained for a delinquent offense. Second, indicate the number of referrals detained in the appropriate heading in Table 10. Follow the same procedure under the C.I.N.S. category-add across-the total should be the same figure as the total of Table (9).

Please Note: Table (10) asks for the length of detention of referrals during the reporting month. If for example, you receive and accept a referral January 30th, the referral should be counted in your January report; however, please wait until February 10th to complete Table (10). In this manner you will have a record of how long your referral from January 30th was detained-up to and including 10 or more days.

FEDERAL AUTHORITIES

Persons under 18 years of age may be apprehended for a violation of a law of the United States by a number of different U.S. law enforcement agencies. Federal law sets out rather clearly that the policy of federal authorities regarding such persons should be to divert them to local jurisdictions whenever possible.

Section 5032 of Title 18, United States Code, provides:

> "A juvenile alleged to have commited an act of juvenile delinquency shall not be proceeded against in any court of the United States unless the Attorney General, after investigation, certifies to an appropriate district court of the United States that the juvenile court or other appropriate court of a State (1) does not have jurisdiction or refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency, or (2) does not have available programs and services adequate for the needs of juveniles.
>
> "If the Attorney General does not so certify, such juvenile shall be surrendered to the appropriate legal authorities of such State. . ."

The Operations Manual for the United States Probation System contains the following statement under Section 5.6, "Diversion to Local Jurisdictions:"

"General Policy. It cannot be emphasized too strongly that every effort should be made by the probation officer to assist in the diversion of a juvenile to local jurisdictions if this action is agreed upon by the U.S. attorney to be in the best interests of the Government and the offender (18 U.S.C. 5001). In some districts the law enforcement agency is permitted to divert juvenile cases directly to the local juvenile authorities without notification to the U.S. attorney. The extent to which diversion is realized depends largely on the interest and understanding of the probation officer and U.S. attorney, and the latter's willingness to divert the case. Often the U.S. attorney's decision for or against diversion depends on the adequacy of local court facilities and the willingness of the local court to accept jurisdiction."

PROCEDURES UNDER TITLE 3, TEXAS FAMILY CODE

GENERAL PROVISIONS

Title 3 of the Texas Family Code

Title 3, effective September 1, 1973, and substantially amended effective September 1, 1975, replaces Article 2338-1, Texas Revised Civil Statutes Annotated, the former Juvenile Court Act. A child can be adjudicated up to his or her eighteenth birthday for conduct engaged in before the seventeenth birthday. The age at which children remain under the jurisdiction of the court has been lowered to 18 (Section 51.02). As under former law, the court may in its discretion transfer a juvenile offender over the age of 15 for trial as an adult. A child may no longer be held over awaiting his 17th birthday in order to deprive the juvenile court of its discretion in this respect. A new Section 8.07, Texas Penal Code, adopted in 1975, provides that 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 perjury and certain traffic offenses. A 1975 amendment (Section 51.04(a)) apparently means that the juvenile court has exclusive jurisdiction over any person who committed proscribed conduct before reaching 17 years of age, even though the person is at time of the court proceedings over 18 years of age. R.E.M. v. State, 532 S.W.2d 645 (Tex. Civ. App.--San Antonio, 1975, no writ).

The new law speaks in terms of a child's conduct and avoids labelling a person as a "delinquent child." The essence of the juvenile law is the determination of whether or not the child engaged in "delinquent conduct" or "conduct indicating a need for supervision." A child may be adjudicated to have engaged in delinquent conduct if he (1) committed a felony or a misdemeanor punishable by a jail sentence, or (2) violated an order of the juvenile court after an earlier disposition (for example, violation of a probation order). In either of these cases the child may be committed to the Texas Youth Council. Those having engaged in conduct indicating a need for supervision include truants, runaways and children who have committed finable misdemeanors or were found driving while intoxicated or under the influence of drugs. The child adjudged of having engaged in such conduct cannot be committed to the Texas Youth Council for that reason alone. But, if a child is found to have engaged in conduct indicating a need for supervison and is put on probation, violation of that probation order is a ground for commission to the Texas Youth Council.

Venue (Section 51.06)

Juvenile proceedings may be commenced in either:

(1) the county in which the child resides, or

(2) the county in which the alleged delinquent conduct or conduct indicating a need for supervision occurred.

Transfer to Another County (Section 51.07)

A child's case can be transferred to another county in two instances:

(1) When a child has been adjudicated in a county other than the county of his residence, the case may be transferred to the child's county of residence for disposition if the child and his attorney consent.

(2) When a child on probation moves with his family to another county.

Waiver of Rights

Section 51.09 attempts to provide general guidelines on the difficult question of whether a juvenile can waive his rights in a juvenile proceeding. Except in situations where the Code specifically says a right cannot be waived any right granted by Title 3 of the Family Code or by "the constitution or laws of this state or the United States" can be waived if:

(1) the waiver is made by the *child* and his *attorney;*

See re R.E.J., 511 S.W.2d 347 (Tex. Civ. App--Houston [1st Dist.] 1974, no writ); In re F.G., 511 S.W.2d 370 (Tex. Civ. App.--Amarillo, 1974, no writ); In re K.W.S., 521 S.W.2d 890 (Tex. Civ. App.--Beaumont 1974, no writ; D.A.W. v. State, 535 S.W.2d 21 (Tex. Civ. App.--Houston [14th Dist.] 1976, writ ref'd n.r.e.)

(2) they are informed of and understand the right and the possible consequences of waiving it;

(3) the waiver is voluntary; and

(4) the waiver is in writing or made in court proceedings that are recorded.

Note that the provision requires that the child understand the right and the possible consequences of waiving it. It may be that no waiver is possible in some cases because the child is incapable of understanding his rights. In re Garcia, 443 S.W.2d 594 (Tex. Civ. App.--El Paso, 1969, no writ). Some courts have indicated that this incapability may be inferred by the mere fact of age. Moore v. Michigan, 355 U.S. 155 (1957). See E.A.W. v. State, ___ S.W.2d ___ (Tex. Civ. App.--Waco #5620, 2/10/77)

Juvenile Confession Law

The original Title 3 requirement that an attorney join in the waiver of rights was one of the most troublesome to law enforcement agencies. In 1975, the Legislature enacted a new section which, for purposes of later use of a written or oral statement, allows the right to remain silent and the right to counsel at a police in-custody interrogation to be waived by the juvenile without the concurrence of his attorney if the provisions of Article 51.09(b) are carefully followed. Welch v. State, 538 S.W.2d 442 (Tex. Civ. App.--Waco 1976, writ ref'd n.r.e.; B.L.C. v. State, 543 S.W.2d 151 (Tex. Civ. App.--Houston[14th] 1976, no writ). But see E.A.W. v. State, ___ S.W.2d ___ (Tex. Civ. App.--Waco #5620, 2/10/77).

The new juvenile confession law is somewhat like the existing adult confession law, but with some major modifications. Of course, in addition to all the below listed requirements, officers should always give juveniles the regular "Miranda" warnings immediately after arrest and prior to any questioning. Under the new law there are three basic situations in which the juvenile confessions are admissible in court:

I.

A. If the child is in the custody of a law enforcement officer, or in any place of detention or confinement (a jail, a detention ward, etc.) before any statement is taken from a juvenile, he must be brought before any judge, and he must be warned that:

1) He may remain silent and not make any statement at all, and that any statement he makes may be used as evidence against him;

2) He has the right to have an attorney present to advise him either prior to any questioning or during the questioning;

3) If he is unable to employ an attorney, he has the right to have an attorney to counsel with him prior to or during any interviews with peace officers or attorneys representing the state;

4) He has the right to terminate the interview at any time;

5) If he is fifteen years of age or older at the time of the violation of the penal law of the grade of felony, the juvenile court may waive its jurisdiction, and he may be tried as an adult ("certified").

B. This statement must be signed in the presence of a magistrate (any judge) by the child <u>with no law enforcement officers or prosecutors present</u>.

C. The magistrate must make an independent determination and be fully convinced that the child understands the nature and content of the statement and that the child is signing it voluntarily. But see E.A.W. v. State, ___ S.W.2d ___ (Tex. Civ. App.--Waco #5620, 2/10/77).

D. Once the judge is so convinced, he must sign his own written statement verifying that he has made such a determination. It is wise to have three separate documents on file:

1) The statutory warnings which must be signed by the judge (Juvenile Confession Form #1, page 9.03);

2) The confession itself which must be co-signed by the juvenile and the magistrate (Juvenile Confession Form #2, page 9.04);

3) The "magistrate's independent determination" that the confession is given voluntarily and intelligently. This must be signed by the magistrate (Juvenile Confession Form #3, page 9.06).

II.

A second situation in which juvenile confessions are admissible is, if after having been given his warnings under Miranda, the confession is made orally, and the child makes a statement of facts and circumstances that turn out to be true, which describes conduct tending to establish his guilt, such as the finding of hidden or stolen property or the tools of the crime. (For example, if the child states that he has hidden the stolen property in a specified hiding place, and as a result that property is later found there). Article 51.09(b)(2). Meza v. State, 543 S.W.2d 189 (Tex. Civ. App.--Austin 1976, no writ).

III.

The third situation in which a juvenile statement is admissible is if the statement is res gestae (made at the same time or simultaneously to) of the offense or the arrest. This applies to cases involving both delinquent conduct and conduct in need of supervision.

JUVENILE CONFESSION FORM #1

(STATUTORY WARNING OF JUVENILE BY MAGISTRATE)

STATE OF TEXAS

COUNTY OF _____

On this day, _____(Name) _____(Race) _____(Sex) _____(Age), personally appeared before me in the custody of _____(Peace Officers), of _____ _____(Jurisdiction), and I gave the said arrested person the following warning:

_____ (child), you have been accused of the offense of _____.

You may remain silent and not make any statement at all;
Any statement you make may be used in evidence against you;
You have the right to have an attorney present to advise you either prior to any questioning or during the questioning;
If you are unable to employ an attorney, you have the right to have an attorney to counsel with you prior to or during any interviews with peace officers or attorneys representing the state;
You have the right to terminate the interview at any time;
If you are 15 years of age or older at the time of the violation of a penal law of the grade of felony, the juvenile court may waive its jurisdiction, and you may be tried as an adult.

CONTINUED

1 OF 5

Above statutory warning given by Judge _____

of _____, County, Texas, on the _____ day of _____, 19___, at _____ A.M./P.M.

I have examined the child independently of any law enforcement officer or prosecuting attorney and I have determined that the child knows and understands his rights stated in the above warnings.

REMARKS:

_____
MAGISTRATE

JUVENILE CONFESSION FORM #2

STATE OF TEXAS

COUNTY OF _____ Date_____
Time_____

Statement of _____, taken at _____

_____ County, Texas
(Building, City)

On the _____ day of _____, 19___ at _____ o'clock _____.M., I, _____, was taken before _____, A Magistrate in _____ County, Texas who informed me:

I may remain silent and not make any statement at all;
Any statement I make may be used in evidence against me;
I have the right to have an attorney present to advise me either prior to any questioning or during the questioning;
If I am unable to employ an attorney, I have the right to have an attorney to counsel with me prior to or during any interviews with peace officers or attorneys representing the state;
I have the right to terminate the interview at any time;
If I am 15 years of age or older at the time of the violation of a penal law of the grade of felonly, the juvenile court may waive its jurisdiction, and I may be tried as an adult.

Understanding my rights, I knowingly, intelligently, and voluntarily waive these rights prior to and during the making of this statement. I do not desire to have an attorney, either retained or appointed, present prior to or during this interview and I now knowingly make the following voluntary statement:

My name is _____. I live at _____ _____. I am _____ years old and my date of birth is _____. My father's name is _____ and he lives at _____. My mother's name is _____ and she lives at _____. If I don't live with my parents my guardian is _____, whose relation to me is _____.

I have read and have had read to me by _____,
a magistrate, each page of this statement consisting of _____ pages, each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

This statement was completed at _____ ____M. on the _____ day of _____, 19____.

WITNESS:_____

WITNESS:_____ _____
SIGNATURE OF CHILD GIVING
VOLUNTARY STATEMENT

This statement was signed by _____ in my presence on the _____ day of _____, 19____, at _____ o'clock _____M., at which time no law enforcement officer or prosecuting attorney was present. I am fully convinced that this person understands the nature and contents of this statement, and further, that this person is signing this statement voluntarily, having knowingly, intelligently and voluntarily waived his rights as stated in the above warnings.

_____
MAGISTRATE

_____
Date

JUVENILE CONFESSION FORM #3

(CERTIFICATE OF MAGISTRATE)

STATE OF TEXAS

COUNTY OF _____

This is to certify that I, _____ acting as and in the capacity of a magistrate, did, on the _____ day of _____ ____, 19____, at _____ ___M., administer the warnings required by Sec. 51.09 of the Texas Family Code to:

Name _____, a child

Age _____ Address _____

who appeared before me in _____, _____ County, Texas;

I hereby certify the following:

1. On the _____ day of _____, 19____, at _____ _____ ____M., _____, a child, signed in my presence a voluntary statement at which time no law enforcement official or prosecuting attorney was present.
2. I have examined _____ outside of the presence and independently of any law enforcement officer or any prosecuting attorney and have determined that this person understands the nature and content of the statement and has knowingly, intelligently and voluntarily waived his statutory rights.
3. I verify that the requisites of Sec. 51.09 of the Texas Family Code have been met as evidenced by the magistrate's warning given by me to the hereinabove mentioned child on this date and the same is now made a part hereof for all purposes.

Executed this the _____ day of _____, 19____.

_____
SIGNATURE OF MAGISTRATE

_____
COURT

_____ COUNTY, TEXAS

Files and Records

Access to three categories of files and records are covered by Section 51.14:

(a) All files and records of a juvenile court, a clerk of court, or a prosecuting attorney relating to a child who is a party to a proceeding under this title are open to inspection only by:

(1) the judge, probation officers, and professional staff or consultants of the juvenile court;

(2) an attorney for a party to the proceeding. (See In re W.R.M., 534 S.W.2d 178 (Tex. Civ. App.--Eastland 1976, no writ)

(3) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or

(4) with leave of juvenile court, any other person, agency or institution having a legitimate interest in the proceeding or in the work of the court.

(b) All files and records of a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court are open to inspection only by:

(1) the professional staff or consultants of the agency or institution;

(2) the judge, probation officers, and professional staff or consultants of the juvenile court;

(3) an attorney for the child; or

(4) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the work of the agency or institution.

(c) Law-enforcement files and records.

Except for files and records relating to a charge for which a child is transferred after a transfer hearing to a criminal court for prosecution, law-enforcement files and records concerning a child are not open to public inspection nor may their contents be disclosed to the public, but inspection of such files and records is permitted by:

(1) a juvenile court having the child before it in any proceeding;

(2) an attorney for a party to the proceeding; and

(3) law-enforcement officers when necessary for the discharge of their official duties.

In addition, the law requires that law-enforcement files and records concerning a child to be kept separate from files and records of arrests of adults and to be maintained on a local basis only and not sent to a central state or federal depository. (Section 51.14(c)). Crime statistics may be furnished to the Department of Public Safety provided that they furnish no basis for identification of a juvenile offender. TEX. ATT'Y. GEN. OP. NO. H-529 (1975).

Fingerprints and Photographs (Section 51.15)

1. Fingerprints of a child may be taken by law-enforcement officials without the consent of the juvenile court officials in only two instances:

a. if a child 15 years or older is referred to the juvenile court for a felony; or

b. for comparison with latent fingerprints found during the investigation of an offense.

2. Photographs of a child in custody may be taken only if:

a. the juvenile court consents; or

b. if the child is transferred to a criminal court after a transfer hearing by the juvenile court.

3. Fingerprint and photograph files or records must be:

a. kept separate from files and records on adults;

b. kept on a local basis only and not sent to a central state or federal depository;

c. available for inspection only as provided by section 51.14(a) and (d). (See discussion on Files and Records, above.)

4. Fingerprint and photographs shall be destroyed if:

a. a petition is not filed against the child;

b. the proceedings are dismissed after a petition is filed;

c. the child is found not to have engaged in the alleged conduct, or

d. the person reaches 18 and there is no record that he committed a criminal offense after reaching 17 years of age.

The agency with custody of the fingerprints or photographs is required to destroy them on its own initiative. If it doesn't, the court may order it to on motion of the person fingerprinted or photographed, or on the court's own motion. (Section 51.15(g)).

5. Fingerprints taken only for comparison with latent fingerprints found during the investigation of an offense are subject to special rules. (Section 51.15(f));

a. If the comparison is negative, the child's fingerprint cards must be destroyed immediately.

b. If the comparison is positive, and the child is not referred to juvenile court, the child's fingerprint cards must be destroyed immediately.

c. If the comparison is positive and the child is referred to juvenile court, all copies of the child's fingerprint cards must be delivered to the juvenile court.

Sealing of Files and Records

Section 51.16 provides that a child may petition the court for sealing of the files and records pertaining to his case following his discharge from the juvenile system. The court may order the files and records sealed at any time after final discharge of the child, and must do so if two years have elapsed, no convictions for felonies or misdemeanors involving moral turpitude or juvenile adjudications have occurred, and the judge determines it is unlikely the person will engage in such conduct in the future. This is intended to assist in the rehabilitation process and to prevent an isolated instance of adolescent misbehavior from plaguing the child into his adult years. The rights he has under this section must be brought to his attention when he is finally discharged from the juvenile process or at the time of the last official action in his case if there is no adjudication. He is to be given:

a. a written explanation of his right to petition the court to seal his records, and

b. a copy of Section 51.16 of the Family Code.

Procedure

a. The motion for a hearing to seal the files and records may be made by:

(1) a person who has been adjudicated of having engaged in delinquent conduct or conduct indicating a need for supervision;

(2) a person taken into custody; or

(3) the juvenile court on its own motion.

b. Set a time for the hearing:

c. Give notice of the time and place of the hearing to:

(1) the person who made the application or who is the subject of the files and records named in the motion;

(2) the prosecuting attorney for the juvenile court;

(3) the agency or person who discharged the child if the final discharge was from an institution or from parole;

(4) the agencies or institutions which have the files or records that are sought to be closed.

d. Hold an informal hearing on the motion to seal the files and records.

e. An order sealing the files and records must be entered if the following determinations are made: (It may be entered at the discretion of the judge at any time after final discharge or last official action.)

(1) two years have elapsed since final discharge of the person, or since the last official action in his case if there was no adjudication;

(2) during that period of time, he has not been convicted of a felony or a misdemeanor involving moral turpitude or found to have engaged in delinquent conduct or conduct indicating a need for supervision;

(3) no proceeding is pending seeking conviction or adjudication; and

(4) the judge feels that the person has been rehabilitated.

f. If an order sealing the files and records is entered, send a copy of the order to each agency or official whose files and records were ordered closed.

Effect of the order (Section 51.16(e)):

(1) All files and records ordered sealed must be sent to the juvenile court, including the files and records of:

(a) law-enforcement agencies;

(b) prosecuting attorneys;

(c) the clerk of the court;

(d) the juvenile court itself; and

(e) public or private agencies or institutions.

(2) All index references to the sealed files and records must be deleted;

(3) If any inquiry is made of any agency or official whose files and records were sealed concerning a person, they shall reply that no record exists with respect to that person;

(4) the adjudication shall be vacated and the proceeding dismissed and treated for all purposes as if it had never occurred;

(5) the sealed files and records may be inspected only after the person who is the subject of the files or records petitions the court and the court orders the files and records opened to inspection. (Section 51.16(f)).

Public Access to Court Hearings (Section 54.08)

This is left entirely to the discretion of the judge. He may include the general public entirely or admit such persons as he deems proper.

Recording of Proceedings (Section 54.09)

The following proceedings must be recorded by stenographic notes or by electronic, mechanical or other appropriate means;

1. Hearing to transfer to criminal court
2. Adjudication hearing
3. Disposition hearing
4. Hearing to modify disposition

In addition, a detention hearing must be recorded if any party requests that it be.

Texas Rules of Civil Procedure

Matters of procedure on which Title 3 of the Family Code is silent are governed by the Texas Rules of Civil Procedure . (Section 51.17) But also see In the Matter of M.A.G., 541 S.W.2d 899 (Tex. Civ. App.--Corpus Christi 1976, writ ref'd, n.r e.)for an application of criminal procedure.

Appeals (Section 56.01)

An appeal from an order of a juvenile court is generally conducted as the appeal of any civil case. Only the child is permitted to appeal from juvenile court determinations. Appealable determinations are the transfer decision, the adjudication decision, the disposition decision, a decision to modify disposition, and decisions made under Chapter 55 of the title dealing with the mentally ill or mentally retarded child.

An appeal does not suspend the order of the juvenile court, nor does it release the child from the custody of that court or of the person, institution, or agency to whose care the child is committed, unless the juvenile court so orders. However, the appellate court may provide for a personal bond. The appellate court may prohibit the trial of a child in the adult court until the appeal of a transfer hearing is concluded. W.C.H., III v. Matthews, 536 S.W.2d 679 (Tex. Civ. App.--Ft. Worth 1976, no writ)

The attorney representing a child on appeal who desires to have included in the record on appeal a transcription of notes of the reporter has the responsibility of obtaining and paying for the transcription and furnishing it to the clerk in duplicate in time for inclusion in the record.

The juvenile court shall order the reporter to furnish a transcription without charge to the attorney if the court finds, after hearing or on an affidavit filed by the child's parent or other person responsible for support of the child that he is unable to pay or to give security therefor.

The court reporter shall report any portion of the proceedings requested by either party or directed by the court and shall report the proceedings in question and answer form unless a narrative transcript is requested.

EVENTS PRIOR TO AND INCLUDING THE REFERRAL TO THE JUVENILE COURT

Taking into Custody (Section 52.01)

A child may be taken into custody:

1. pursuant to an order of the juvenile court under the provisions of the Code;
2. pursuant to the laws of arrest;
3. by a law-enforcement officer if there are reasonable grounds to believe that the child has engaged in delinquent conduct or conduct indicating a need for supervision;
4. by a probation officer if there are reasonable grounds to believe that the child has violated a condition of probation imposed by the juvenile court.

Sec. 52.01(b) provides that the taking of a child into custody is not an arrest except for the purpose of determining the validity of taking him into custody or the validity of a search under the laws and constitution of this state or of the United States. But see Matter of Hartsfield, 531 S.W.2d 196 (Tex. Civ. App.--Tyler, 1975, no writ).

A "law-enforcement officer means a peace officer as defined by Art. 2.12, Texas Code of Criminal Procedure. Other statutes and court decisions make it rather clear that although not listed in Art. 2.12, a juvenile probation officer has the right of a police officer or sheriff under Art. 14.01, Texas Code of Criminal Procedure, to make an arrest without a warrant for any offense committed in their presence or within their view. Art. 5142, Texas Revised Civil Statutes Annotated; In re S.E.B., 514 S.W.2d 948 (Tex. Civ. App.--El Paso 1974, no writ). In fact, an early Attorney General's opinion held that a juvenile officer appointed under authority of Art. 5142 has the legal right to carry a gun while in the discharge of his official duty. TEX. ATT'Y. GEN. OP. NO. 0-7332 (1946).

Warning Disposition (52.01(c))

1. The Code authorizes, but does not set out specific guidelines for, a system for disposition of the matter at this point without taking the child into custody by issuing a warning notice if:
   a. the contact with the child is by a law enforcement officer;
   b. guidelines for warning disposition have been issued by the law-enforcement agency in which the officer works (See page- 6.01 for example guidelines)
   c. the guidelines have been approved by the juvenile court of the county in which the disposition is made;
   d. the disposition is authorized by the guidelines;
   e. the warning notice identifies the child and describes his alleged conduct.
2. A copy of the warning notice issued under this procedure must be:

a. given to the child;

b. sent to the child's parent, guardian, or custodian as soon as practicable;

c. filed with the law enforcement agency; and

d. filed with the office or official designated for that purpose by the juvenile court.

A warning filed with the office or official designed by the juvenile court may be used as the basis of further action if necessary. (Section 52.01(d)).

Release or Delivery to the Court (Section 52.02)

1. A person taking a child into custody, "without unncessary delay and without first taking the child elsewhere," shall do one of the following:

   a. release the child to his parent, guardian, custodian, or other responsible adult upon that person's promise to bring the child before the juvenile court when requested by the court;

   b. bring the child before the office or official designated by the juvenile court for that purpose. (In some counties, this official may be the judge himself. For further requirements when a child is brought to the court or an official designated by the court, see section on Referral to Juvenile Court.);

   c. bring the child to a detention facility designated by the juvenile court;

   d. bring the child to a medical facility if the child is believed to suffer from a serious physical condition or illness that requires prompt treatment; or

   e. dispose of the case without referral to the court according to the provisions of Section 52.03 of the Code (See section on Disposition Without Referral to Court.)

2. A person taking a child into custody also shall "promptly give notice of his action and a statement of the reason for taking the child into custody," to:

   a. the child's parent, guardian or custodian (see In re S.R.L., ___ S.W.2d ___ (Tex. Civ. App.--Waco #5643, 12/30/76); and

   b. the office or official designated for this purpose by the juvenile court.

Disposition Without Referral to Court (Section 52.03)

Section 52.03 authorizes a law enforcement officer to dispose of minor juvenile cases without referring them to the juvenile court if the local law enforcement agency and the juvenile court have given him the authority to do so. This disposition differs from the "warning disposition" outlined in a previous section in that here the child has actually been taken into custody.

1. Dispositions under this authority may be made by law enforcement officers if:

   a. guidelines for such dispositions have been issued by the law-enforcement agency in which the officer works; (See page- 6.01 for example guidelines).

   b. the guidelines have been approved by the juvenile court of the county in which the disposition is made;

   c. the disposition is authorized by the guidelines; and

   d. the officer makes a written report of his disposition to the law-enforcement agency,

      (1) identifying the child and

      (2) specifying the grounds for believing that the taking into custody was authorized.

2. Dispositions of this type may involve:

the child to an agency other than the juvenile court, or

ference with the child and his parent, guardian or custodian.

his type may NOT involve:

child in law-enforcement custody; or

eriodic reporting of the child to a law-enforcement officer, ment agency, or other agency.

ting the number and kind of dispositions made by a law-enforce- authority of this section shall be reported at least annually cial designated by the juvenile court, as ordered by the court.

Court (Section 52.04)

1. Anytime a child or a child's case is referred to the office or official designated by the juvenile court, the following must accompany the referral or be provided as quickly as possible after referral:

   a. all information in the possession of the person or agency making the referral pertaining to the identity of the child and his address, the name and address of the child's parent, guardian, or custodian, the names and addresses of any witnesses, and the child's present whereabouts;

   b. a complete statement of the circumstances of the alleged delinquent conduct or conduct indicating a need for supervision;

   c. when applicable, a complete statement of the circumstances of taking the child into custody; and

   d. when referral is by an officer of a law-enforcement agency, a complete statement of all prior contacts with the child by officers of that agency.

2. The juvenile court, or the office or official designated by the court to receive referrals may refer the case to a law-enforcement agency for the purpose of conducting an investigation to obtain necessary information.

EVENTS AFTER REFERRAL BUT PRIOR TO JUDICIAL PROCEEDINGS

Preliminary Investigation and Determinations (Section 53.01)

1. As soon as a child or a child's case has been referred to the juvenile court (or to the office or official designated for this purpose by the court), a magistrate, the intake officer, probation officer, or other person authorized by the court should:

   a. advise the child and his parents, if present, of and ask if they understand that:

      (1) he may remain silent and not make any statement at all and that any statement he makes may be used in evidence against him;

      (2) he has the right to have an attorney present to advise him either prior to any questioning or during the questioning;

      (3) if he is unable to employ an attorney, he has the right to have an attorney to counsel with him prior to or during any interviews with peace officers or attorneys representing the state.

      (4) he has the right to terminate the interview at any time;

      (5) if he is 15 years of age or older at the time of the violation of a penal law of the grade of felony, the juvenile court may waive its jurisdiction and he may be tried as an adult.

      (Miranda v. Arizona, 384 U.S. 436 (1966); Leach v. State, 428 S.W.2d 817 (Tex. Civ. App.--Houston [14th Dist.] 1968, no writ). Section 51.09 Texas Family Code. It is the practice in some localities, for purposes of possible criminal proceedings if juvenile jurisdiction is later waived, to take the child before a magistrate who should advise him of his rights if (1) he has allegedly commited a felony and (2) he is 15 years of age or older. Remember that if the statement of a child is to be used in later proceedings, the provisions of Section 51.09 must be followed carefully and a magistrate must give the warning and independently examine the child.)

   b. conduct a preliminary investigation to determine whether:

      (1) the person referred to the court is a child within the meaning of the Code; that is, whether he or she is a person:

         (a) 10 years of age or older and under 17 years of age, or

         (b) 17 years of age or older and under 18 years of age who is alleged to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age;

      (2) there is probable cause to believe the child engaged in delinquent conduct or conduct indicating a need for supervision; and

      (3) further proceedings in the case are in the interest of the child or the public.

"Probable cause" is a legal concept not easily defined. It is often stated as a reasonable ground for suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in believing that the party charged is guilty of the offense with which he is charged. Stacey v. Emery, 97 U.S. 642 (1878)

2. If the person conducting this investigation determines that the person is not a "child," or there is no probable cause, or further proceedings are not warranted,

   a. the child shall immediately be released, and

   b. the proceedings terminated.

3. If the person conducting the investigation determines that further proceedings in the case are authorized and warranted, either:

   a. "informal adjustment" may be conducted.

   b. a petition for an adjudication hearing may be filed (See section on Court Petition; Answer)

   c. a petition for a hearing to transfer the case to an adult criminal court may be filed. (See section on Court Petition; Answer)

Notice to Parents (Section 53.01(c))

1. When custody of a child is given to the juvenile court (or to the office or official designated by the court) in connection with a referral, the intake officer, probation officer, or other person authorized by the court shall promptly give to the child's parent, guardian or custodian:

   a. notice of the whereabouts of the child and

   b. a statement of the reason he was taken into custody.

2. This notice does not again have to be given if the parent, guardian or custodian earlier received fair notice of the child's whereabouts from the law-enforcement officer or other person originally taking the child into custody and the whereabouts of the child has not changed.

Section 53.01(c) seems to require that if the whereabouts of the child has changed, another notice must be made. For example, if a child is taken into custody and placed in a city juvenile ward, Section 52.02(b) would require the person taking the child into custody to promptly give notice to the parents. Then, if on the working day, the child is taken to the probation office while an investigation is made, Section 53.01(c) would seem to require that notice of the child's whereabouts again be given to the parents.

Release from Detention (Section 53.02)

1. In addition to the preliminary determinations of whether the court has jurisdiction (see previous discussion under section on Preliminary Investigation and Determinations), if the child is brought before the court or delivered to a detention facility designated by the court, a further investigation and determination must be made. The law provides that the intake or other authorized officer of the court shall immediately make an investigation and either:

   a. release the child,

   b. release the child conditioned upon requirements "reasonably necessary to insure the child's appearance at later proceedings," or

   c. temporarily detain the child.

2. If the child is released conditionally, the conditions of the release must be:

   a. in writing,

   b. filed with the office or official designated by the court, and

   c. furnished to the child.

3. A determination to detain the child at this stage of the proceedings can be made only if the officer believes:

   a. the child is likely to abscond or be removed from the jurisdiction of the court,

   b. suitable supervision, care, or protection for the child is not being provided by a parent, guardian, custodian, or other person; or

   c. the child has no parent, guardian, custodian, or other person able to return him to the court when required.

4. If the intake or other authorized officer decides to detain the child, the law requires that:

   a. a request for a detention hearing be made and promptly presented to the court, and

   b. a detention hearing (as outlined in section on Detention Hearing) shall be held not later than the second working day after the child was taken into custody, or if detained on a Friday or Saturday, on the next working day.

Informal Adjustment (Section 53.03)

1. Following the referral of a child to the juvenile court, one of the alternatives available to the person conducting the preliminary investigation (see section on Preliminary Investigation and Determinations) if he believes that further proceedings are warranted, is to refer the parties in the case to the probation officer or another designated official for a period of informal counselling in an attempt to achieve voluntary rehabilitation of the child. The law sets out certain guidelines for this practice:

   a. the procedure is subject to the direction of the juvenile judge and should be supervised by him;

   b. it is to be conducted by the probation officer or another designated officer of the court;

   c. it may last only for "a reasonable period of time" not to exceed six months;

   d. it is to be attempted only if advice without a court hearing would be in the interest of the public and the child;

   e. it is to be conducted before a petition is filed;

   f. the child and his parent, guardian, or custodian must consent to the informal adjustment procedure with knowledge that consent is not obligatory;

   g. unless otherwise permitted by the Code, the child may not be detained during or as a result of the adjustment process.

2. Other requirements of the law are set out in the following items, which should be told to the child and parents before conducting the counselling:

   a. information obtained from them by the person giving advice or in discussions or conferences during the process of informal adjustment will not be used against the child or his parents in any future court hearing;

   b. they may withdraw from the adjustment process at any time;

   c. the effort at informal adjustment will not prevent the filing of a petition at a future date; and

   d. the fact that they are participating an informal adjustment does not constitute an adjudication of delinquent conduct or conduct indicating a need for supervision and if they wish to dispute allegations that have been made against the child and have the facts determined by the court at a hearing, no further effort will be made at informal adjustment.

Court Petition, Answer (Section 53.04)

1. Following the referral of a child to the juvenile court, one of the alternatives available to the person conducting the preliminary investigation required by Section 53.01 (see section on Preliminary Investigation and Determinations) if he believes that further proceedings are warranted, is to refer the case to the prosecuting attorney with the recommendation that a petition be filed for either an adjudication hearing or a hearing to transfer the case to an adult criminal court. (See Stockton v. State, 506 S.W.2d 918 (Tex. Civ. App.--Waco 1974, no writ) for a case where both a petition for adjudication and a petition for transfer were filed.) See also In re W.R.M., 534 S.W.2d 178 (Tex. Civ App.--Eastland 1976, no writ); Welch v. State, 538 S.W.2d 442 (Tex. Civ. App.--Waco 1976, writ ref'd n.r.e.)

2. A petition may be made "as promptly as practicable" by a prosecuting attorney who has knowledge of the facts or is informed and believes they are true. (Section 53.04(a))

3. The petition may be on information and belief. (Section 53.04(c))

4. Contents of the petition:

   a. The proceedings shall be styled "In the matter of _____." (Section 53.04(b))

   b. A statement setting out "with reasonable particularity:"

      (1) the time,

      (2) the place, and

      (3) manner of the acts alleged, (Section 53.04(d)(1))

   c. The penal law or standard or conduct allegedly violated by the acts;

   d. The child's:

      (1) name,

      (2) age, and

      (3) residence addresss (Section 53.04(d)(2))

   e. The name and residence address of:

      (1) his parent,

      (2) guardian, or

      (3) custodian; (Section 53.04(d)(3)

   f. The name and residence address of the child's spouse, if any; and

   g. If the child's parent, guardian or custodian does not reside or cannot be found in the state, or if their places of residence are unknown, the name and residence address of any known adult relative residing in the county or, if there is none, the name and residence address of the known adult relative residing nearest to the location of the court.

5. An oral or written answer to the petition may be made at or before the commencement of the hearing. If there is no answer, a general denial of the alleged conduct is assumed. (Section 53.04(e))

6. After the petition has been filed, the juvenile court must set a time for the adjudication or transfer hearing. The law requires the hearing time to be set for not later than 10 days after the day the petition was filed if:

   a. the child is in detention, or

   b. a summons has or will be issued ordering a law-enforcement officer to take immediate custody of the child. (Section 53.05(b)(2))

Section 53.07(a) of Title 3 requires the summons to be served two days before the hearing if personally served or five days if served by certified mail. In re Gault, 389 U.S. 1 (1967) requries that "[N]otice...must be given sufficiently in advance of sche-

duled court proceedings so that reasonable opportunity to prepare will be afforded." It would seem possible that the two-day and five-day periods of Sections 53.07(a) would not satisfy *Gault*.

Allegations in the Petition

The Family Code delineates two standards of conduct which give the juvenile court jurisdiction: (a) delinquent conduct and (b) conduct indicating a need for supervision. The petition should allege either that the child engaged in delinquent conduct or that the child engaged in conduct indicating a need for supervision. This depends on the type of acts he allegedly committed.

Section 51.03 provides that *delinquent conduct* is conduct:

a. other than a traffic offense,

b. that violates:

(1) a penal law of this state punishable by imprisonment or by confinement in jail (see In re E.A.R., ___ S.W.2d ___ (Tex. Civ. App.--Texarkana #8432, 2/22/77); or

(2) an order of a juvenile court entered as the result of a disposition hearing or a hearing to modify disposition.

Conduct indicating a need for supervision is defined by Section 51.03(b) to be conduct:

a. other than a traffic offense,

b. that on three or more occasions violates either of the following:

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

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

c. the unexcused voluntary absence of a child on 10 or more days or parts of days within a six-month period of three or more days or parts of days within a four-week period from school;

d. 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; or

e. 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).

The prosecuting attorney should present a petition first alleging that the conduct is delinquent conduct or conduct indicating a need for supervision, then the language of Section 51.03, then the time, place and manner of the alleged acts, and the penal law or standard of conduct allegedly violated by the acts. Example: "The said child engaged in delinquent conduct, to wit: That on or about the ____ day of _____, 19___, the said child violated a penal law of this state punishable by imprisonment, to-wit: Section 31.07 of the Penal Code of Texas, in that he did then and there intentionally and knowingly operate the motor propelled vehicle of _____ the owner thereof without the effective consent of said owner." Matter of P.B.C, 538 S.W.2d 448 (Tex. Civ. App.--El Paso 1976, no writ)

The penal laws are found in the Texas Penal Code. See Index of Texas Penal Code of Offenses most Applicable in Juvenile Court.

The exception of "traffic offenses" from the definitions of delinquent conduct or conduct indicating a need for supervision means the juvenile court is not concerned with violations of penal statutes "cognizable by" Article 802e of the Penal Code (Section 51.02(9)(A)) nor with violations of motor vehicle traffic ordinances of incorporated cities or towns in the state (Section 51.02(9)(B)).

Article 802e of the Penal Code (now found in the Civil Statutes as Article 6701l-4) provides that a male minor over 14 and under 17 years of age or a girl over 14 and

under 18 years of age who drives a motor vehicle on a public road or highway while under the influence of intoxicating liquor or who drives in such a way as to violate any traffic law of the state shall be guilty of a misdemeanor and shall be fined not more than $100. The Attorney General has held that the unequal treatment of males and females in this statute makes it constitutionally unenforceable against persons in the seventeen to eighteen year old category but that it is enforceable against those seventeen and under. TEX. ATT'Y. GEN. OP. NO. H-232 (1974).

Section 4 of the article provides that the offenses created in the act are under the jurisdiction of the courts regularly empowered to try misdemeanor cases carrying the same penalty and shall not be under the jurisdiction of the juvenile courts. But, it expressly is not to be construed to otherwise repeal or affect the statutes regulating the powers and duties of juvenile courts. TEX. ATT'Y. GEN. OP. NO. WW-547 (1959). The 1975 amendments to the Family Code specifically adding driving while intoxicated offenses to the jurisdiction of the juvenile court (Section 51.03(b)(4) apparently means that both the juvenile court and the adult traffic court have jurisdiction of these types of offenses. If in the adult court, the statute requires that the parents be present or at least a diligent effort be made to obtain their presence during the trial of the offense. The minor cannot be placed in jail for failure to pay the fine, but the court can suspend and take from him his driver's license until the fine is paid. A minor who fails to make bond pending trial is to be treated as an adult and may be confined in jail, however. TEX. ATT'Y. GEN. OP. NO. WW-547 (1959).

The other traffic offenses recognized in Article 802e and therefore <u>not</u> a part of the juvenile courts' jurisdiction are:

> Vernon's Texas Penal Code 795--No racing or contest for speed. (now repealed--see Article 6701d, Section 185)
>
> Vernon's Texas Panel Code 801--The law of the road. (repealed by Acts 1973, 63rd Leg., ch. 399, effective January 1, 1974)
>
> Vernon's Texas Penal Code 827a--Regulating operation of vehicles on highways. (now Article 6701d-11)
>
> Vernon's Texas Penal Code 827f--Speed of vehicles on beaches; driving while intoxicated. (now Article 6701d-21)
>
> Vernon's Texas Civil Statutes 6701d--Uniform traffic act.

Liquor violations involving minors are covered by provisions of the Penal Code (Liquor Control Act), in addition to the juvenile act. The liquor control act contains three provisions under which minors may be prosecuted. Each of these violations is prosecuted in justice of the peace or municipal court, and the juvenile court is not involved. TEX. ATT'Y. GEN. OP. NO. H-320 (1974).

Section 14(a) of Article 666-17 of the Penal Auxiliary Laws, the only one of these sections used to any real extent in most counties makes it unlawful for any person under 18 years to purchase any alcoholic beverage or to possess any alcoholic beverage unless he or she is a bona fide employee on the licensed premises where the alcoholic beverage is possessed or unless he or she is accompanied by his or her parent, guardian, adult husband, adult wife, or other adult person into whose custody he or she has been committed for the time by some court. In the case where the adult is present, he must be actually visibly and personally present at the time of the consumption or possession by the person under 18.

Counties bordering on other States may have some occasion to use sections 14(d) and 21, having to do with the bringing of alcoholic beverages into the State of Texas by minors.

The driver's license laws also have a specific provision related to juveniles. They provide that a provisional license can be suspended upon the recommendation of the Juvenile Court when it is found that the child has committed any offense in which a motor vehicle was used to travel to or from the scene of an offense. Traffic offenses are excepted from the Statute.

Before the 1975 amendments, "truancy" in the Family Code was defined as violation of the compulsory school attendance laws, requiring reference to the Texas Education Code. The 1975 amendments, however, define truancy in the Family Code itself (Section 51.03(b)(2) to be the unexcused voluntary absence of a child from school:

> --10 or more days or parts of days within a six-month period or

--3 or more days or parts of days within a four-week period

An absence is excused when it results from:

(1) illness of the child;

(2) illness or death in the family of the child;

(3) quarantine of the child and family;

(4) weather or road conditions making travel dangerous;

(5) an absence approved by a teacher, principal, or superintendent of the school in which the child is enrolled; or

(6) circumstances found reasonable and proper. (Section 51.03(d)).

Summons; Notice (Section 53.06)

Reasonable notice of any forthcoming judicial hearing should be given the child and his parent, guardian or custodian in all instances. Written, served summons is specifically required by the Code only for a hearing on the transfer of a case to an adult criminal court or an adjudication hearing.

1. When a summons is required, the court should issue a written summons to:

   a. the child named in the petition; (See Casanova v. State, 494 S.W.2d 812 (Tex. 1973); In re M.W., 523 S.W.2d 513 (Tex. Civ. App.--El Paso 1975, no writ)

   b. the child's parent, guardian, or custodian; (Matter of Honsaker, 539 S.W.2d 198 (Tex. Civ. App.--Dallas 1976, writ ref'd n.r.e.)

   c. the child's guardian ad litem; and

   d. any other person who appears to the court to be a proper or necessary party to the proceeding.

2. Contents of the summons:

   a. time of the hearing,

   b. place of the hearing,

   c. an order to the persons served to appear before the court at the time set to answer the allegations of the petition.

   d. a copy of the petition must accompany the summons and should be made a part of it: "A copy of the petition is attached hereto and made a part hereof."

   e. if the summons is for a hearing on the transfer of the child to a criminal court, the summons must state that the hearing is for the purpose of considering discretionary transfer to a criminal court. (See R.K.M. v. State, 520 S.W.2d 878 (Tex. Civ. App.--San Antonio 1975, no writ); In re K.W.S., 521 S.W.2d 890 (Tex. Civ. App.--Beaumont 1975, no writ); D.L.C. v. State, 533 S.W.2d 157 (Tex. Civ. App.--Austin 1976, no writ); D.A.W. v. State, 535 S.W.2d 21 (Tex. Civ. App.--Houston), [14th Dist.] 1976, writ ref'd n.r.e.); In re T.T.W., 532 S.W.2d 418 (Tex. Civ.App.--Texarkana 1976, no writ); In re I.Y., 535 S.W.2d 729 (Tex. Civ. App.--Eastland 1976, no writ).)

   f. The summons may include an order directing the parent, guardian, or custodian of the child to appear personally at the hearing and directing the person having the physical custody or control of the child to bring the child to the hearing. (These orders are enforceable by contempt under Section 54.07(a).)

Although the peace officer or probation officer should have given the parties notice of their right to be presented by counsel at an earlier stage in the process, many courts feel it is good practice to again advise of this right in writing at the time the summons is served. If for no other reason, this may prevent a delay when the parties appear in court without an attorney, having not understood until then that they were entitled to one. One state prints the following language on the reverse of the summons:

a. You have the right to be represented by an attorney.

b. If you desire to employ an attorney, you should do so immediately in order that he may be ready at the hearing date.

c. If you are financially unable to employ an attorney, you must notify the Court immediately upon the receipt of this summons. If you desire a court-appointed attorney, the Court must determine prior to the hearing whether you are financially unable to employ an attorney.

3. Immediate Custody (Section 53.06(d))

a. The court may endorse on the summons an order that a law-enforcement officer shall serve the summons and immediately take the child into custody, if an affidavit is filed or sworn testimony is presented to the court which the court believes shows that:

(1) the child is likely to abscond or be removed from the jurisdiction of the court;

(2) suitable supervision, care, or protection for him is not being provided by a parent, guardian, custodian, or other person; or

(3) he has no parent, guardian, custodian, or other person able to return him to the court when required.

b. The officer shall immediately bring the child before the court and the court should immediately schedule a detention hearing. (See section on Detention Hearing).

4. Service of the Summons. (Section 53.07) Summons can be served in three ways:

a. If a person to be served with a summons is in this state and can be found, the summons shall be served upon him personally at least two days before the day of the adjudication hearing.

b. If he is in this state and cannot be found, but his address is known or can with reasonable diligence be ascertained, the summons may be served on him by mailing a copy by registered or certified mail, return receipt requested, at least five days before the day of the hearing.

c. If he is outside this state but he can be found or his address is known, or his whereabouts or address can with reasonable diligence be ascertained, service of the summons may be made either by delivering a copy to him personally, or mailing a copy to him by registered or certified mail, return receipt requested, at least five days before the end of the hearing.

The summons may be served by any suitable person under the direction of the court. (Sec. 53.07(c)) Section 53.07(b) further provides:

> The juvenile court has jurisdiction of the case if after reasonable effort a person other than the child cannot be found nor his post office address ascertained, whether he is in or outside this state.

Guardian Ad Litem (Section 51.11)

1. The court *must* appoint a guardian ad litem if a child appears before the court without a parent or guardian.

2. The court *may* appoint a guardian ad litem if it appears to the court that the child's parent or guardian is incapable or unwilling to make decisions in the best interests of the child with respect to the proceedings.

3. The child's attorney may also be appointed his guardian ad litem.

4. The guardian ad litem may *not* be any of the following:

a. a law-enforcement officer

b. a probation officer, or

c. an employee of the juvenile court.

5. Recommended procedure for the Judge:

   a. Enter order appointing a guardian ad litem.

   b. Explain the duties of a guardian ad litem to him: to protect the interests of the child and to recognize and protect the child from any conflicts of interest between the child and the parents.

   c. See that the guardian ad litem gets access to all records in the case and has ample opportunity to confer with the child.

Appointment of Counsel

Section 51.10 provides that a child may be represented by an attorney at every stage of the proceedings, including:

a. detention hearings;

b. hearings to transfer to adult criminal court;

c. adjudication hearings;

d. disposition hearings;

e. hearings to modify disposition;

f. hearings concerning children with mental illness, retardation, disease, or defect;

g. habeas corpus proceedings; and

h. proceedings in appellate courts.

This right to representation may not be waived in:

a. hearings to transfer to adult criminal courts;

b. adjudication hearings;

c. disposition hearings;

d. hearings to modify disposition to commit the child to the Texas Youth Council; and

e. hearings concerning children with mental illness, retardation, disease, or defect. Section 51.10(b)

Presumably the right to representation may be waived for some events in the juvenile process, but Section 51.09 requires that such waivers be made by the child "and the attorney for the child."

1. Before the hearing on any juvenile matter, the Judge should ascertain whether or not the child has counsel.

2. If he does not have counsel; the Judge should:

   a. advise him and his parents

      (1) of his right to counsel and

      (2) that counsel will be appointed if they cannot afford an attorney.

   b. ask them if they want

      (1) time to hire a lawyer, or

      (2) one appointed for them.

3. If the parents and child want counsel appointed, the Judge must determine whether the parents or other persons responsible for support are financially able to employ counsel.

4. If the Judge determines that they are financially able to employ counsel, he may order the child's parent or other person responsible for support of the child to employ an attorney to represent the child. (This order may be directly enforced by contempt under Section 54.07 of the code, or the court can appoint counsel and order the parent or other person responsible for support to pay a reasonable attorney's fee set by the court. This latter order may also be enforced by contempt under Section 54.07).

5. If the Judge determines that they are not financially able to employ counsel, he may enter an order appointing one or more practicing attorneys to defend the child.

   The date on this form will insure that the record contains the date of appointment for calculation of the 10-day preparation period allowed for an adjudication or transfer hearing.

   The appointed attorney is to be paid from the general fund of the county according to the schedule in Article 26.05 of the Texas Code of Criminal Procedure, 1965.

6. Notwithstanding the previous discussion, the Code allows the court to "appoint an attorney in any case in which it deems representation necessary to protect the interests of the child." (Section 51.10(g)).

JUDICIAL PROCEEDINGS

Detention Hearing[1]

1. A detention hearing may be held by:
   a. the juvenile court judge,[2]
   b. a substitute judge,[3] or
   c. a referee.[4]
2. Before the hearing, the judge, substitute judge, or referee should be sure the following things have been done:
   a. written or oral notice,[5] stating the
      (1) time
      (2) place, and
      (3) purpose[6] of the hearing has been given to:
         (a) the child;
         (b) his parent, guardian or custodian;
         (c) his attorney; and
         (d) his guardian ad litem if he has one.
   b. see that the attorney for the child has been given access to all written matter to be considered by the court in making the detention decision.[7]
3. Hearing Procedure when hearing before a judge or substitute judge

a. See that it is noted in the record the presence or absence of:

(1) the child; (the child's presence is required)

(2) his parents, guardian or custodian;[8]

(3) his attorney;

(4) his guardian ad litem;

b. See that the attorney's name and the fact that he is an attorney representing the child is noted in the record.

c. Inform the parties of and explain to them:

(1) the child's right not to make any statements whatsoever,

(2) the right to consult with an attorney before making any statement or answering any question,

(3) that he or she has a right to have an attorney present during any discussions with law enforcement or juvenile court personnel,

(4) that if he or she cannot afford an attorney one will be provided at public expense,

(5) that he or she may stop answering questions at any time,

(6) that there is no penalty for refusing to make a statement,

(7) that the purpose of the hearing is to determine whether the child should continue to be held in custody.

d. Tell the child and his parents, guardian or custodian the requirements of the law: "This is a detention hearing under Section 54.01 of the Texas Family Code. The court will order the child released unless it finds:

"(1) that he is likely to abscond or be removed from the jurisdiction of the court;

"(2) that suitable supervision, care, or protection for him is not being provided by a parent, guardian, custodian or other person; or

"(3) that he has no parent, guardian, custodian, or other person able to return him to court when required."

e. Allow the State to present its evidence. Written reports from probation officers, professional court employees and professional consultants are admissable as well as witnesses.[9]

f. Allow the child and his parents, guardian or custodian to present any evidence they may have.

g. Allow rebuttal evidence from the state;

h. Allow rebuttal evidence from the child;

i. Allow arguments from the State;

j. Allow arguments from the child;

k. Allow closing argument from the State;

l. Decide whether the child should be detained until the adjudication hearing;

m. Either:

(1) order the child released,

(2) order the child released with conditions, or

(3) order the child detained;

n. The order should be:

(1) read orally in open court; then

(2) reduced to writing, then

(3) filed in the record.

4. If the child had no attorney and was detained, he is immediately entitled to one. Section 51.10(c). The court therefore should follow the steps outlined in the section on Appointment of Counsel (p. 1.03.28) to order the retention of counsel or to appoint counsel.

5. Hearing Procedure when hearing before a referee[10]

a. Inform the parties[11] who have appeared that they are entitled to have the detention hearing before the juvenile court judge or a substitute judge.

b. If a party objects:

(1) enter an order reciting the objection and a statement that the case will be called to

the attention of the juvenile judge or substitute judge.

(2) reduce the order to writing

(3) file it with the papers in the case

(4) immediately call this action to the attention of:

(a) the juvenile judge if he is in the county, or

(b) any magistrate as a substitute judge if the juvenile judge is out of the county[12]

c. If none of the parties object to the hearing being conducted by a referee, or if the child and his attorney waive the right to a hearing before a judge or substitute judge (see page 1.01.3, Waiver of Rights), follow the steps under items 3 and 4, above.

d. See that the orders entered are promptly transmitted to the juvenile court judge or substitute judge.

e. That judge must, within 24 hours:[13]

(1) adopt;

(2) modify, or

(3) reject

the referee's recommendations.[14]

6. Subsequent Detention Orders[15]

a. A detention order extends to the conclusion of the disposition hearing, if there is one, but in no event more than 10 days.

b. Further detention orders may be entered only after:

(1) another detention hearing; or

(2) waiver of the subsequent hearing by:

(a) the child, and

(b) his attorney

(3) Before accepting a waiver, be sure:

(a) the child and the attorney are informed of and understand the right to a detention hearing and the possible consequences of waiving it;

(b) the waiver is voluntary;

(c) the waiver is in writing and signed by both the child and his attorney or made in court proceedings which are recorded.

7. Request for Shelter.[16]

a. No detention hearing is required where there is a voluntary request by the child[17] for shelter in a detention facility pending the arrangement of transportation to the child's place of residence in another county, state or country.

b. The request for shelter must contain

(1) a statement by the child that he voluntarily agrees to submit himself to custody and detention for a period of not longer than

10 days without a detention hearing;

(2) an allegation by the person detaining the child that the child has left his place of residence in another state or country or another county of this state, that he is in need of shelter, and that an effort is being made to arrange transportation to his place of residence; and

(3) a statement by the person detaining the child that he has advised the child of his right to demand a detention hearing

c. The request must be:

(1) executed not later than the next working day after he was taken into custody; and

(2) signed by the juvenile court judge to evidence his knowledge of the fact that the child is being held in detention.

d. The request for shelter may be revoked by the child at any time, and on such revocation, if further detention is necessary, a detention hearing shall be held not later than the next working day.

Footnotes--Detention Hearing

1. Section 54.01. This section details the nature of the detention hearing that must be held not later than the second working day after a child is taken into custody if he is not released sooner. The hearing is informal and without a jury. A child may be detained only if it seems he is unlikely to appear at subsequent proceedings or he is not being given adequate supervision, care and protection. The juvenile court can delegate responsibility for conducting the detention hearing to a referee. A runaway from outside the county can be held for up to 10 days upon his request to provide opportunity to arrange for his return to his home.

   Judges should carefully watch for new court decisions in this area which may ingraft procedural requirements onto the law concerning detention hearings to fulfill the due process requirements of the Constitution. For example, the Fifth Circuit Court of Appeals held in Moss v. Weaver, 525 F.2d 1258 (5th Cir. 1976), that the pretrial detention of juveniles without determination of probable cause violates the Fourth Amendment, but it did not require that a finding of probable cause be made on competent, sworn testimony with witnesses subject to cross-examination. Other jurisdictions have held that a detained juvenile has a due process right to a probable cause hearing, including the right to confront witnesses at the hearing. People ex rel. Guggenheim v. Mucci, 360 N.Y.S. 2d 71 (1974).

2. The juvenile court judge is the regular judge of the court designated under Section 51.04(b) or (c) of the Code. With limited exceptions, he must be an attorney licensed to practice law in the state. Section 51.04(d).

3. A substitute judge is any magistrate if the judge of the juvenile court is not in the county or is otherwise unavailable. (See Sections 51.04(f) and 54.01(1) of the Code.) He does not have to be an attorney. Note that the judge of the juvenile court must be out of the county or otherwise unavailable.

4. Sections 51.04(g); 54.01(1); and 54.10. A referee may be appointed by the juvenile board if there is one and if not, by the juvenile court. The referee must be an attorney licensed to practice law in Texas. A party to a juvenile case may object to a referee hearing the matter, in which instance an authorized judge or substitute judge must hear it within 24 hours. If the case is heard by a referee, his findings must b reviewed by an authorized judge or substitute judge within 24 hours.

   If the child is being held in a detention facility in another county, the hearing may be held in that county.

5. If a written notice is used, it should be filed in the record to show notice was given.

6. "The purpose of the hearing is to determine whether the child will be released pending further proceedings in the juvenile court."

7. You may order counsel not to reveal items to the child or his parents, guardian, or guardian ad litem if such disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future. Section 54.01(c).

8. If the parents are not present, enter a notation on the docket sheet that the court has been unable to locate them. The hearing may be conducted without the parents if the court has not been able to locate them, but if no parent or guardian is present, the court should appoint a guardian ad litem for the child.

9. Section 54.01(c). Theoretically, the substantive factual allegations relating to the offense for which the child is before the court should not be considered by the judge. Those facts must be presented and proved at the adjudication hearing. In practice, it is necessary for the judge to have before him the alleged facts of the present case to come to a reasonable decision on temporary detention, particularly in view of the recent decision to require a showing of probable cause at the detention hearing. Moss V. Weaver, 525 F2d 1258 [5th Cir. 1976]. This does not mean that a full, adversary proceeding with witnesses is necessary.

10. Sections 51.04(g); 54.01(1); and 54.10.

11. "Party" means the state, the child, the child's parent, spouse, guardian or guardian ad litem. Section 51.02(10).

12. If a party has an objection, an authorized judge must conduct the hearing within 24 hours.

13. Failure to act within 24 hours results in release of the child by operation of law.

14. If the referee has recommended the child be released, he shall be immediately released, but may later be placed back in detention if the juvenile court or substitute judge rejects or modifies the recommendation for release.

15. Section 54.01(h). R.K.M. v. State, 535 S.W.2d 676 (Tex. Civ. App. --San Antonio 1976, no writ)

16. Section 54.01(i) through (k)

17. The child may sign the request without the concurrence of an adult.

Transfer to Criminal Court--Child Under 18[1]

1. Order a "complete, diagnostic study, social evaluation, and full investigation of the child, his circumstances and the circumstances of the alleged offense."[2]
2. As soon as possible and at least ten days before the hearing appoint an attorney if the child has not retained one.[3]
3. Appoint a guardian ad litem if necessary.[4]
4. Follow the requirements for preliminary steps set out in the following sections:
   a. Court Petition; Answer
   b. Summons; Notice. The summons must also state that the hearing is for the purpose of considering discretionary transfer to criminal court.[5]
5. See that counsel for the child is given access to all reports and records relating to the child which will be considered by the court in the hearing at least one day prior to the hearing.[6]
6. Hearing[7]
   a. The question the court must answer in the hearing is whether the welfare of the community requires criminal proceedings. This can arise only from:
      (1) the seriousness of the offense, or

(2) the background of the offender.[8]

b. In making the determination the judge must specifically consider, along with any other things, the following:

(1) whether the alleged offense was against person or property, with greater weight in favor of transfer given to offenses against the person;[9]

(2) whether the alleged offense was committed in an aggressive and premeditated manner;[10]

(3) whether there is evidence upon which a grand jury may be expected to return an indictment;[11]

(4) the sophistication and maturity of the child;[12]

(5) the record and previous history of the child;[13] and

(6) the prospects of adequate protection of the public and the likelihood of the rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court.[14]

7. Suggested Hearing Procedure

a. Determine whether all parties are present and see that it is noted in the record:

(1) Child

(2) Parents, guardian or custodian

(3) Guardian ad litem, if any

(4) Attorney for the child[15]

(5) Attorney for the State

b. Determine whether lawful notice was given to the parties and see that this is noted in the record.[16]

c. See that the record reflects all pertinent actions in the case prior to the hearing.[17]

d. Explain the nature and possible consequences of the proceedings. Inform them that the question the court must answer in the hearing is whether the welfare of the community requires criminal proceedings and that this will be determined by

(1) the seriousness of the offense, and

(2) the background of the offender.

e. Inform the parties of and explain to them:

(1) the privilege against self-incrimination;

(2) the right to remain silent;

(3) the right to confrontation and cross-examination of witnesses;

(4) the right to have the child's own witnesses present

f. State introduces evidence (witnesses and exhibits),[18]

g. State's attorney questions the witnesses and then passes them,

h. Child's attorney questions the witnesses and then passes them back,[19]

i. Upon completion of its case, the State rests,

j. Defendant's attorney puts on his evidence,

k. Cross-examination by State,

l. Defense rests,

m. Separate counsel for parents, if any, introduces evidence,

n. State introduces rebuttal evidence, if any, and closes,

o. Child's attorney introduces rebuttal evidence, if any, and closes,

p. State's attorney makes closing argument,

q. Child's attorney makes closing argument,

r. State's attorney makes final closing argument.

s. Either:

(1) Retain jurisdiction,[20] or

(2) Waive jurisdiction: certify to criminal court clerk:

(a) written order,

(b) written findings of the court,[21]

(c) written reasons of the court for the transfer,[22] and

(d) complaint against the child.[23]

t. If jurisdiction is waived, instruct the attorney[24] to advise the child and his parent, guardian or guardian ad litem of the child's

(1) right to appeal;

(2) right to representation by counsel on appeal; and

(3) right to appointment of an attorney for the appeal if the child or his parents cannot afford one.

Footnotes--Transfer to Criminal Court

1. Section 54.02(a)-(i). Also see generally, Kent v. United States, 383 U.S. 541 (1966).

Section 54.02(a) provides:

> The juvenile court may waive its exclusive original jurisdiction and transfer a child to the appropriate district court or criminal district court for criminal proceedings if:
>
> (1) the child is alleged to have violated a penal law of the grade of felony;
>
> (2) the child was 15 years of age or older at the time he is alleged to have committed the offense and no adjudication hearing has been conducted concerning that offense; (see Stockton v. State, 506 S.W.2d 918 (Tex. Civ. App.--Waco 1974, no writ); In re W.R.M., 534 S.W.2d 178 (Tex. Civ. App.--Eastland 1976, no writ) and
>
> (3) after full investigation and hearing the juvenile court determines that because of the seriousness of the offense or the background of the child the welfare of the community requires criminal proceedings.

Section 54.02, in conjunction with Section 51.02(1) defining a child and Article 8.07 of the Penal Code, prohibits the prosecution of a person (of any age) who committed a felony prior to becoming 17 years of age unless the juvenile court conducts a transfer hearing and transfers the child to criminal court. R.E.M. v. State, 532 S.W.2d 645 (Tex. Civ. App.--San Antonio 1975, no writ)

2. Section 54.02(d). This report should include a report by a psychologist, a detailed report by someone who has investigated the home and family background of the child, the criminal background of the child and a detailed report of the circumstances of the crime necessitating waiver. The probation officer is the best person to make this report if one is available.

This report is mandatory, unless properly waived by the child and his attorney in accordance with Section 51.09. R.E.M. v. State, 532 S.W.2d 645 (Tex. Civ. App.--San Antonio 1975, no writ); R.E.M. v. State, 541 S.W.2d 841 (Tex. Civ. App.--San Antonio 1976, writ ref'd, n.r.e.).

3. See section on Appointment of Counsel. The presence of counsel at the transfer hearing cannot be waived. The ten-day preparation period for the attorney may be waived. (See section on Waiver of Rights) In re Faubus, 498 S.W.2d 21 (Tex. Civ. App.--Amarillo 1974, no writ).

4. See section on Guardian Ad Litem

5. Section 54.02(b). R.K.M. v. State, 520 S.W.2d 878 (Tex. Civ. App.--San Antonio 1975, no writ); In re K.W.S., 512 S.W.2d 890 (Tex. Civ. App.--Beaumont 1975, no writ); D.L.C. v. State, 533 S.W.2d 157 (Tex. Civ. App.--Austin 1976, no writ); D.A.W. v. State, 535 S.W.2d 21 (Tex. Civ. App.--Houston [14th] 1976, writ, ref'd, n.r.e.); In re T.T.W., 532 S.W.2d 418 (Tex. Civ. App.--Texarkana 1976, no writ).

6. This includes the report of the investigation previously ordered. The court may order counsel not to reveal items to the child or his parent, guardian, or guardian ad litem if such disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future. (Section 54.02(e)

7. The hearing is to be conducted without a jury. Section 54.02(c).

8. Section 54.02(a)(3).

9. For example, theft, burglary, etc., as compared to murder, robbery, rape, etc.

10. If against a person, was the offense aggressive premeditated, the end result of another crime in progress, or was it accidental? Also consider whether the juvenile was a principal, accomplice, accessory or bystander. See Meza v. State, 543 S.W.2d 189 (Tex. Civ. App.--Austin 1976, no writ).

11. There is some question as to the amount of evidence that must be presented to the juvenile judge in the transfer hearing. Some district attorneys (the usual official to move for transfer, although the statute would seem to allow anyone to request transfer) are reluctant to present extensive evidence in the juvenile court when a criminal trial is anticipated after transfer. The statute would seem to leave the determination of what burden the prosecutor must bear up to the juvenile judge, because the decision to transfer is discretionary with him. Many judges feel this logically also gives them discretion over how much evidence they must hear to make a proper determination and require that at least a prima facie case be presented in the transfer hearing. Matter of P.B.C., 538 S.W.2d 448 (Tex. Civ. App.--El Paso 1976, no writ); Matter of Honsaker, 539 S.W.2d 198 (Tex. Civ. App.--Dallas 1976, writ ref'd, n.r.e.) In the Matter of I.J., 546 S.W.2d 110 (Tex. Civ. App.--Eastland 1977, no writ).

    In some jurisdictions, the juvenile court's waiver and transfer of jurisdiction is construed to be a finding of probable cause to believe the accused guilty. Green v. U.S., 308 F.2d 303 (D.C. Cir. 1962).

12. Some judges consider: adultlike behavior as compared to childlike behavior, background of the juvenile, simplicity as compared to grossness, and deceptiveness as compared to genuineness or naturalness. See Meza v. State, 543 S.W.2d 189 (Tex. Civ. App.--Austin 1976, no writ)

13. Among other things, the number of referrals, types of referrals, and whether they are of a graduating nature: e.g., wandering in the streets, runaway, truancy, theft, burglary.

14. Section 54.02(f).

15. Be sure the record shows that the 10-day preparation period allowed the attorney was observed or waived.

16. See section on Summons; Notice

17. e.g., dates of appointment and name of attorney, guardian ad litem; dates of any continuances; date answer was filed, etc.

18. > [T]he court may consider written reports from probation officers, professional court employees, or professional consul-

tants in addition to the testimony of witnesses. Section 54.02(e)
Also see R.E.M. v. State, 541 S.W.2d 841 (Tex. Civ. App.--San Antonio 1976, writ ref'd, n.r.e.)

19. If child takes stand, again advise of rights against self-incrimination, ask if he understands it. If the child and his parents each have attorneys, both should be allowed to cross-examine.

20. If the juvenile court retains jurisdiction, the child is not subject to prosecution at any time for any offense alleged in the petition or for any offense within the knowledge of the juvenile judge as evidenced by anything in the record of the proceedings. Section 54.02(g).

Ellis v. State, 543 S.W.2d 135 (Tex. Crim. App. 1976)
21. The order should recite the consideration of each of the factors enumerated in Section 54.02(h).

22. The court must "state specifically in the order its reasons for waiver. . ." Section 54.02(h). ". . .the Juvenile Court must set out the rationale of its order, and that is the rational basis of the court's conclusion or motive that constrains entry of the order waiving jurisdiction." In re J.R.C., 522 S.W.2d 579 (Tex. Civ. App.--Texarkana 1975, writ ref'd n.r.e.); D.L.C. v. State 533 S.W.2d 157 (Tex. Civ. App.--Austin 1976, no writ); In re W.R.M., 534 S.W.2d 178 (Tex. Civ. App.--Eastland 1976, no writ); Tatum v. State, 534 S.W.2d 678 (Tex. Crim. App.1976); Matter of P.B.C., 538 S.W.2d 448 (Tex. Civ. App.--El Paso 1976, no writ); Matter of Honsaker, 539 S.W.2d 198 (Tex. Civ. App.--Dallas 1976, writ ref'd, n.r.e.)

23. The transfer of custody is an arrest. The court to which the case has been transferred shall then have an examining trial. Section 54.02(h). Examining trials are covered by Article 16.0 *et seq* of Texas Code of Criminal Procedure and in this context are primarily for the purpose of determining whether probable cause exists to hold the accused until the grand jury can act.

In an examining trial, the witnesses must be examined in the presence of the accused. TEX. CODE CRIM. PROC. ANN. art. 16.08 (1965). Counsel for the state and the accused or his counsel have the right to question the

witnesses on direct or cross examination. If no counsel appears for the state, the judge may examine the witnesses. (Article 16.06). An examining trial is to be governed by the same rules of evidence that govern a final trial. (Article 16.07).

After the examining trial, the case is taken to the grand jury.

Either the examining court or the grand jury may remand the child to the juvenile court. Section 54.02(h) and (i). If the grand jury does not return an indictment, the district court must certify the grand jury's failure back to the juvenile court, which may upon receipt of the certification resume jurisdiction of the child.

24. If the child is not represented by an attorney, the court should give the parties notice of the child's rights concerning appeals and appoint counsel for the child unless waived. This situation should not arise because appeal lies only from those proceedings at which the child cannot waive the right to counsel. See generally, section on Appeals

Transfer to Criminal Court--Child over 18[1]

1. As soon as possible and at least ten days before the hearing appoint an attorney if the child has not retained one.[2]
2. Appoint a guardian ad litem if necessary.[3]
3. Follow the requirements for preliminary steps set out in the following sections:
   a. Court Petition; Answer
   b. Summons; Notice.. The summons must also state that the hearing is for the purpose of considering waiver of jurisdiction under Subsection (j) of Section 54.02, Texas Family Code.[4]
4. Hearing[5]
   a. The questions[6] the court must answer in the hearing are:
      (1) is the person 18 years of age or older?
      (2) was the person 15 years of age or older and under 17 years of age at the time he is alleged to have committed a felony?
      (3) has no adjudication concerning the alleged offense been made or no adjudication hearing concerning the offense been conducted? And
      (4) from a preponderance of the evidence that after due diligence of the state that it was

not practicable to proceed in juvenile court before the 18th birthday of the person because:

(A) the state did not have probable cause to proceed in juvenile court and new evidence has been found since the 18th birthday of the person; or

(B) the person could not be found.

5. Suggested Hearing Procedure

a. Determine whether all parties are present and see that it is noted in the record:

(1) Child

(2) Parents, guardian or custodian

(3) Guardian ad litem, if any

(4) Attorney for the child[7]

(5) Attorney for the State

b. Determine whether lawful notice was given to the parties and see that this is noted in the record.[8]

c. See that the record reflects all pertinent actions in the case prior to the hearing.[9]

d. Explain the nature and possible consequences of the proceedings.

e. Inform the parties of and explain to them:

(1) the privilege against self-incrimination;

(2) the right to remain silent;

(3) the right to confrontation and cross-examination of witnesses;

(4) the right to have the child's own witnesses present

f. State introduces evidence (witnesses and exhibits),

g. State's attorney questions the witnesses and then passes them,

h. Child's attorney questions the witnesses and then passes them back,[10]

i. Upon completion of its case, the State rests,

j. Defendant's attorney puts on his evidence,

k. Cross-examination by State,

l. Defense rests,

m. Separate counsel for parents, if any, introduces evidence,

n. State introduces rebuttal evidence, if any, and closes,

o. Child's attorney introduces rebuttal evidence, if any, and closes,

p. State's attorney makes closing argument,

q. Child's attorney makes closing argument,

r. State's attorney makes final closing argument.

s. Either:

(1) Retain jurisdiction,[11] or

(2) Waive jurisdiction: certify to criminal court clerk:

(a) written order

(b) written findings of the court[12] and

(c) complaint against the child.[13]

t. If jurisdiction is waived, instruct the attorney[14] to advise the child and his parent, guardian or guardian ad litem of the child's

(1) right to appeal;

(2) right to representation by counsel on appeal; and

(3) right to appointment of an attorney for the appeal if the child or his parents cannot afford one.

Footnotes--Transfer to Criminal Court

1. Section 54.12(j)-(l). These sections are new as of September 1, 1975, and are for the purpose of transferring to the adult criminal court persons 18 years of age or older who committed a crime when under 17 years of age, but was not earlier adjudicated because of lack of evidence or inability to find the person.

2. See section on Appointment of Counsel. The presence of counsel at the transfer hearing cannot be waived. The ten-day preparation period for the attorney may be waived. (See section on Waiver of Rights. In re Faubus, 498 S.W.2d 21 (Tex. Civ. App.--Amarillo 1974, no writ)

3. See section on Guardian Ad Litem

4. R.K.M. v. State, 520 S.W.2d 878 (Tex.Civ.App.--San Antonio 1975, no writ); In re K.W.S., 521 S.W.2d 890 (Tex.Civ.App.--Beaumont 1975, no writ)

5. The hearing is to be conducted without a jury. Section 54.02(l).

6. Section 54.02(j).

7. Be sure the record shows that the 10 day preparation period allowed the attorney was observed or waived.

8. See section on Summons; Notice

9. e.g., dates of appointment and name of attorney, guardian ad litem; dates of any continuances; date answer was filed, etc.

10. If child takes stand, again advise of right against self-incrimination, ask if he understands it. If the child and his parents each have attorneys, both should be allowed to cross-examine.

11. If the juvenile court retains jurisdiction, the child is not subject to prosecution at any time for any offense alleged in the petition or for any offense within the knowledge of the juvenile judge as evidenced by anything in the record of the proceedings. Section 54.02(g).

A 1975 amendment (Section 51.04(a)) apparently means that the juvenile court has exclusive jurisdiction over any person who committed proscribed conduct before reaching 17 years of age, even though the person is at the time of the court proceedings over 18 years of age.

12. The order should recite the findings required in Section 54.02(j).

13. The transfer of custody is an arrest. The court to which the case has been transferred shall then have an examining trial. Section 54.02(h). Examining trials are covered by Article 16.01 *et seq* of Texas Code of Criminal Procedure and in this context are primarily for the purpose of determining whether probable cause exists to hold the accused until the grand jury can act.

In an examining trial, the witnesses must be examined in the presence of the accused. TEX. CODE CRIM. PROC. ANN. art. 16.08 (1965). Counsel for the state and the accused or his counsel have the right to question the witnesses on direct or cross examination. If no counsel appears for the state the judge may examine the witnesses. (Article 16.06). An examining trial is to be governed by the same rules of evidence that govern a final trial. (Article 16.07).

After the examining trial, the case is taken to the grand jury.

Either the examining court or the grand jury may remand the child to the juvenile court. Section 54.02(h) and (i). If the grand jury does not return an indictment, the district court must certify the grand jury's failure back to the juvenile court, which may upon receipt of the certification resume jurisdiction of the child.

14. If the child is not represented by an attorney, the court should give the parties notice of the child's rights concerning appeals and appoint counsel for the child unless waived. This situation should not arise because appeal lies only from those proceedings at which the child cannot waive the right to counsel. See generally, section on Appeals.

Adjudication Hearing[1]

1. Before the hearing, be sure the following has been done:
   a. As soon as possible and at least ten days before the hearing appoint an attorney if the child has not retained one.[2]
   b. Appoint a guardian ad litem if necessary.[3]
   c. Follow the requirements for preliminary steps set out in the following sections:
      (1) Court Petition; Answer
      (2) Summons; Notice
2. Suggested Hearing Procedure
   a. If a referee[4] is to hold the hearing instead of a juvenile judge,
      (1) he should either:
         (A) inform the parties who have appeared that they are entitled to have the hearing before the juvenile judge, or
         (B) confirm that the papers in the case contain a waiver by the child and the attorney for the child, in accordance with the requirements of Section 51.09, of the right to have the hearing before the juvenile judge.

(2) If a party objects, the referee should:

(A) enter an order reciting the objection and a statement that the case will be called to the attention of the juvenile court judge

(B) reduce the order to writing

(C) file it with the papers in the case

(D) call this action to the attention of the juvenile judge.

b. Determine whether all parties are present and see that it is noted in the record:

(1) Child

(2) Parent or guardian

(3) Guardian ad litem, if any

(4) Attorney for the child[5]

(5) Attorney for the State

c. Determine whether lawful notice was given to the parties and see that this is noted in the record,[6]

d. See that the record reflects all pertinent actions in the case prior hearing.[7]

e. Read all allegations in the petition which form

the basis for the complaint and explain them to the child and his parent, guardian or guardian ad litem.[8]

e. Explain the nature and possible consequences of the proceedings.[8A]

f. Explain to the child:

(1) his or her right not to make any statements whatsoever,

(2) that any statement made can be used against him or her,

(3) the right to consult with an attorney before making any statement or answering any question,

(4) that he or she has a right to have an attorney present during any discussions with law enforcement or juvenile court personnel,

(5) that if he or she cannot afford an attorney, one will be provided at public expense,

(6) that he or she may stop answering questions at any time,

(7) that there is no penalty for refusing to make a statement,

(8) that he or she has a right to a hearing in open court,

(9) that he or she has a right to confront and cross-examine adverse witnesses;

(10) that he or she has a right to present evidence,

(11) that he or she has a right to a trial by jury.[9]

h. Ask the child if he understands his rights and the allegations of the petition, expressing them in non-legal terms if necessary.

i. State introduces evidence (witnesses and exhibits),[10]

j. State's attorney questions the witnesses and then passes them,

k. Child's attorney questions the witnesses and then passes them back,[11]

l. Upon completion of its case, the State rests,

m. Defendant's attorney puts on his evidence,

n. Cross-examination by State,

o. Defense rests,

p. Separate counsel for parents, if any, introduces evidence,

q. State introduces rebuttal evidence, if any, and closes,

r. Child's attorney introduces rebuttal evidence, if any, and closes,

s. State's attorney makes closing argument,

t. Child's attorney makes closing argument,

t. State's attorney makes final closing argument.

3. If the hearing was before a jury, the judge reads the charge to the jury,[12] and the jury retires.

4. If the allegations in the petition have not been established, the matter should be dismissed.

5. If the court or the jury determines that the state has proved beyond a reasonable doubt that the child engaged in delinquent conduct or conduct indicating a need for supervision, the court should announce this fact and enter the findings in a written judgment to be filed in the record.

6. If the decision is against the child, the court or the jury must state in its finding or verdict which of the allegations in the petition were found to be established by the evidence.[13]

7. If the decision is against the child, the court must set a date and time for the disposition hearing.

8. If the decision is against the child, instruct the attorney[14] to advise the child and his parent, guardian or guardian ad litem of the child's
   (a) right to appeal;
   (b) right to representation by counsel on appeal; and
   (c) right to appointment of an attorney for the appeal if the child or his parents cannot afford one.

9. If the hearing was conducted by a referee,[15]

   a. the referee should see that the orders entered are promptly transmitted to the juvenile court judge.

   b. The judge must, within 24 hours:

      (1) adopt;

      (2) modify; or

      (3) reject

      the referee's recommendations.

Footnotes--Adjudication Hearing

1. A child may be found to have engaged in delinquent conduct or conduct indicating a need for supervision only after an adjudication hearing conducted in accordance with the provisions of Section 54.03.

2. See section on Appointment of Counsel. The presence of counsel at the adjudication hearing cannot be waived. The ten-day preparation period can be waived. See section on Waiver of Rights
In re Faubus, 498 S.W.2d 21 (Tex.Civ.App.--Amarillo 1974, no writ).

3. See section on Guardian ad Litem.

4. A referee may be appointed by the juvenile board if there is one and if not by the juvenile court. Sections 51.04(g) and 54.10. The referee must be an attorney licensed to practice law in Texas. If the hearing is conducted by a referee, his findings must be reviewed by the regular juvenile judge within 24 hours.

5. Be sure the record shows that the 10-day preparation period allowed the attorney was observed or waived.

6. See section on Summons; Notice.

7. e.g., dates of appointment and name of attorney, guardian ad litem; dates of any continuances; date answer was filed, etc.

8. In re D.L.E., 531 S.W.2d 196 (Tex. Civ. App.--Eastland 1975, no writ). These allegations include the parts of the petition stating the age, residence, parents, etc. of the child, besides the facts concerning the alleged misconduct. Miguel v. State, 500 S.W.2d 680 (Tex. Civ. App.--Beaumont 1975, no writ).

   Amendments to the pleadings in juvenile cases are governed generally by the rules of civil procedure, but the requirements of *In re Gault* as regards notice are also involved.

   The Texas Supreme Court has held that "the strict prohibition against amendment of pleadings applicable in crimi-

nal cases (matters of form but not matters of substance may be amended) is not applicable in juvenile proceedings." Carrillo v. State, 480 S.W.2d 612 (Tex. 1972). The rules of civil procedure provide that the parties may amend their pleadings at any time (even at the trial itself) as long as it does not operate as a surprise to the opposite party. TEX. R. CIV. P. ANN. 63, 66. But, the notice to the juvenile and his parents required by *In re Gault* "must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded, and it must 'set forth the alleged misconduct with particularity.'" 387 U.S. 1 at 33. Thus, in State v. Santana, 444 S.W.2d 614 (Tex. 1969), the Texas Supreme Court approved the amendment of the state's pleadings before trial, but on the day of the trial, from a charge of "assault to rape" to "rape" where the counsel for the alleged delinquent did not claim surprise, but found in Carrillo v. State, 480 S.W.2d 612 (Tex. 1972), that a tendered amendment was not permissible under *Gault* where the amendment occurred after the trial had begun and toward the end of the trial. "The tendered amendments included not only a different owner of the property alleged shoplifted, but also a separate offense, that of taking additional property, and counsel for the alleged defendant insisted that he was surprised and prejudiced." The court held that "the amendment was at such a time and under such circumstances as to be prohibited, as a matter of due process, by *Gault*." 480 S.W. 2d 612 at 615.

8A. This is mandatory. In re D.L.E., 531 S.W.2d 196 (Tex. Civ. App.--Eastland 1975, no writ).

9. Section 54.03(c) provides "Trial shall be by jury unless jury is waived in accordance with Section 51.09 of this code."

Matters pertaining to juries not set out in the Juvenile Court Act are governed by the Texas Rules of Civil Procedure. However, a verdict must be unanimous- that is, by twelve members of a jury of twelve (district courts) or by six members of a jury of six (county courts). Section 54.03(c). In the matter of A.N.M., 542 S.W.2d 916 (Tex. Civ. App.-- Dallas 1976, no writ).

10. Only material, relevant, and competent evidence in accordance with the requirements for the trial of civil cases may be considered in the adjudication hearing. Section 54.03(d). A social history report or social service file shall not be viewed by the court before the adjudication decision and shall not be viewed by the jury at any time.

In the adjudicatory phase, the court is concerned only with whether the child has by definition engaged in delinquent conduct or conduct indicating a need for supervision. The reports, social studies and recommendations of the probation officer concern the question of what disposition should be made and should not be before the judge until after adjudication is made.

Section 54.03(e) provides,

> An extrajudicial statement which was obtained without fulfilling the requirements of this state or the United States, may not be used in an adjudication hearing. A statement made by the child out of court is insufficient to support a finding of delinquent conduct or conduct indicating a need for supervision unless it is corroborated in whole or in part by other evidence. Evidence illegally seized or obtained is inadmissable in an adjudication hearing.

The Supreme Court of Texas has held that adjudication of a juvenile as delinquent on basis of uncorroborated testimony of an accomplice was not violative of any of the juvenile's constitutionally guaranteed fundamental rights notwithstanding the fact that criminal statutes prohibit the conviction of an adult on the basis of uncorroborated accomplice testimony. In re S.J.C., 533 S.W. 2d 746 (Tex. 1976). Also, In the Matter of A.N.M., 542 S.W.2d 916 (Tex. Civ. App.--Dallas 1976, no writ).

11. If child takes stand, again advise of right against self-incrimination, ask if he understands it. If the child and his parents each have attorneys, both should be allowed to cross-examine.

Section 54.03(e) provides, "A child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision need not be a witness against nor otherwise incriminate himself."

12. Section 54.03(f) specifically requires, "the jury will be instructed that the burden is on the state to prove that a child has engaged in delinquent conduct or is in need of supervision beyond a reasonable doubt."

13. Section 54.03(h).

14. If the child is not represented by an attorney, the court should give the parties notice of the child's rights concerning appeals and appoint counsel for the child unless waived. This situation should not arise because appeal lies only from those proceedings at which the child cannot wiave the right to counsel. See generally, section on Appeals.

15. Section 54.10(b).

Disposition Hearing[1]

1. Before the hearing:
   a. be sure the child has:
      (1) an attorney[2]
      (2) a guardian ad litem, if necessary[3]
   b. see that counsel for the child is given access to all reports and records relating to the child which will be considered by the court in the hearing.[4]
2. Hearing[5]
   a. If a referee[6] is to hold the hearing instead of a juvenile judge,
      (1) he should either:
         (A) inform the parties who have appeared that they are entitled to have the hearing before the juvenile judge, or
         (B) confirm that the papers in the case contain a waiver by the child and the attorney for the child, in accordance with the requirements of Section 51.09, of the right to have the hearing before the juvenile judge.
      (2) If a party objects, the referee should:
         (A) enter an order reciting the objection and a statement that the case will be

called to the attention of the juvenile court judge

(B) reduce the order to writing

(C) file it with the papers in the case

(D) call this action to the attention of the juvenile judge

b. Determine whether all parties are present and see that it is noted in the record:

(1) child

(2) parents, guardian or custodian

(3) guardian ad litem, if any

(4) attorney for the child

(5) attorney for the State

c. Explain the purpose of the hearing.

d. Explain that no disposition order at all will be made unless the court finds that:

(1) the child is in need of rehabilitation, or

(2) the protection of the public or the child requires a disposition.[7]

e. Receive the probation officer's written or oral report.[8]

f. Receive any other evidence, such as that of past and present activities of the child.

g. Allow the child's attorney to question the probation officer and other witnesses and present

his own evidence

h. Allow the parent's separate counsel, if any, to do the same.

i. Determine whether any disposition at all should be made.[9]

(1) Is the child in need of rehabilitation? or

(2) Does the protection of the public or the child require that disposition be made?

j. If the court determines that a disposition should be made, it must next specify the type of disposition.

(1) If the child was adjudicated to have engaged in *delinquent conduct*,[10] the court may:

(a) place the child on probation on such reasonable and lawful terms as the court may determine for a period not to exceed one year, subject to extensions not to exceed one year each:

(A) in his own home or in the custody of a relative or other fit person;

(B) in a suitable foster home; or

(C) in a suitable public or private institution or agency, except the Texas Youth Council,[11] or

(b) commit the child to the Texas Youth Council[12]

(2) If the child was adjudicated to have engaged in *conduct indicating a need for supervision*, the court may place the child on probation as outlined in (a) above, but may not commit the child to the Texas Youth Council.

k. Enter the order of disposition:

(1) read in open court, then

(2) reduce to writing, then

(3) file in the record

l. Commit the child to the present custody of the probation officer.[13]

m. Instruct the child's attorney[14] to advise the child and his parent, guardian or guardian ad litem of the child's

(1) right to appeal;

(2) right to representation by counsel on appeal;

(3) right to appointment of an attorney for the appeal if the child or his parents cannot afford one.

3. If the hearing was conducted by a referee,[15]

a. the referee should see that the orders entered are promptly transmitted to the juvenile court judge.

b. The judge must, within 24 hours:

(1) adopt;

(2) modify; or

(3) reject

the referee's recommendations

4. Injunction Prohibiting Contact[16]

a. Requirements:

(1) notice to all persons affected (1.03.21)

(2) a hearing (may be part of the disposition hearing)

(3) upon presentation of evidence, a finding that the person is a contributing cause of the child's delinquent conduct or conduct indicating a need for supervision.

b. Enter the injunction:

(1) read in open court, then

(2) reduce to writing, then

(3) file in the record

5. Types of Disposition and Order Required:

a. Commitment to Texas Youth Council (Article 5143d, Vernon's Civil Statutes Annotated).

(1) Judgment

(2) Order of Commitment[17]

b. Probation

(1) Judgment

(2) Order of probation.[17] The order will include a list of terms and conditions of probation

specified by the judge.[18] Commonly used terms are: That the said delinquent:

(a) commit no offense against the law of the State of Texas or of any other state or of the United States

(b) avoid injurious or vicious habits;

(c) avoid persons or places of disreputable or harmful character;

(d) report to the probation officer as directed: the juvenile is paroled to _____, Juvenile Probation Officer, or his successors in office; the juvenile shall report this day in person and thereafter [once per month] _____;

(e) permit the probation officer to visit the child at the child's home or elsewhere;

(f) remain within _____ County, Texas, unless this court consents in writing to the change of residence;

(g) follow the following curfew regulations: on week nights the child is to be at home before _____ o'clock p.m.; on Friday and Saturday nights the said child is to be home at _____ o'clock p.m., and the following exceptions will be permitted:

(h) continue to attend school and to be regular in attendance and obey school rules and regulations;

(i) not associate with the following people:

(j) not visit nor loiter around the following places:

Footnotes--Disposition Hearing

1. Section 54.04. The disposition hearing should be separate, distinct and subsequent to the adjudication hearing. Section 54.04(a).

   The time between the hearings allows the judge to study reports on the child and the probation officer to make further investigation and reports, based on matters raised at the adjudication hearing. See In re Gonzales, 328 S.W.2d 475 (Tex. Civ. App.--El Paso 1959, writ ref'd n.r.e.)

   The practice of bifurcated hearings protects a child from being subjected to investigation when he does not admit the allegations of the petition. The very fact of an investigation is sometimes felt by the family to be harmful and intrusive. Further, before adjudication the child must be presumed not to have committed the acts alleged in the petition, and the parents are equally entitled to the presumption of innocence if the petition alleges a condition of neglect.

   There are times when the separation of the two phases need only be momentary, provided the judge has sufficient information to make disposition without further delay. This is often the case in smaller communities where either the judge does not have personnel to make a social study, or he knows the child and his family situation sufficiently from personal contact to make an immediate adjudication. In most cases, however, the two phases should be separated by a period of several days.

   There is no right to a jury at the disposition hearing.

2. See section on Appointment of Counsel. The presence of counsel at the disposition hearing may not be waived.

3. See section on Guardian ad Litem.

4. The court may order counsel not to reveal items to the child or his parent, guardian, or guardian ad litem if such disclosure would materially harm the treatment and

rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future.

5. Some judges feel the atmosphere at the disposition hearing can be more relaxed and informal. The emphasis shifts from the offense to concern for the child. As much as possible, some judges share the information with the parents and child that will influence his decision. They feel open communication between the parties, the judge and the probation officer is desirable and free expression of feelings should be encouraged.

   It is at this stage, however, that the interests of the child and the interests of his parents may conflict. The parents may feel they cannot control the child and want him committed to a juvenile facility, although another disposition might be in the best interests of the child. Therefore a more formal proceeding may be required to assure that all information bearing on alternative dispositions may be brought out.

6. A referee may be appointed by the juvenile board if there is one, and if not by the juvenile court. Sections 51.04(g) and 54.10. The referee must be an attorney licensed to practice law in Texas. If the hearing is conducted by a referee, his findings must be reviewed by the regular juvenile judge within 24 hours.

7. Section 54.04(c)

8. "[T]he juvenile court may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses." Section 54.04(b). Tyler v. State, 512 S.W.2d 46 (Tex.Civ.App.--Beaumont 1974, no writ). Matter of A.A.A., 528 S.W.2d 337 (Tex. Civ. App.--Corpus Christi 1975, no writ).

   The purpose of such reports is to provide the data for a fair and constructive disposition. The material contained in the reports is legally irrelevant at the adjudicatory hearing. If the author of the social study report has admissible evidence of the allegations of the petition, it can be elicited at the adjudicatory hearing. Therefore, the reports, which may contain prejudicial information about the child, should not be submitted to the court

before the adjudication, even if they have already been prepared. See In the Matter of A.N.M., 542 S.W.2d 916 (Tex. Civ. App.--Dallas 1976, no writ).

9. Section 54.04(c) provides:

> No disposition may be made under this section unless the court finds that the child is in need for rehabilitation or that the protection of the public or the child requires that disposition be made. If the court does not so find, it shall dismiss the child and enter a final judgment without any disposition. See In the Matter of E.F., 535 S.W.2d 213 (Tex. Civ. App.--Corpus Christi 1976, no writ).

10. See page 9.01 for definition of delinquent conduct.

11. When a child has been placed on probation outside his home, the juvenile court may order the parent or another person responsible for the child's support to pay for the support of the child outside the home. Section 54.06. This order can be made only "after giving the parent or person responsible. . .a reasonable opportunity to be heard." Section 54.06(a). The order for support may be enforced, as may any order of the juvenile court, by contemp. Two subsections of Section 54.07 relate to contempt for non-payment of support. Section 54.07(b) provides,

> The juvenile court may enforce its order for support by civil contempt proceedings after 10 days' notice to the defaulting person of his failure or refusal to carry out the terms of the order.

Section 54.07(c) further provides,

> On the motion of any person or agency entitled to receive payments for the benefit of a child, the juvenile court may render judgment against a defaulting person for any amount unpaid and owing after 10 days' notice to the defaulting person of his failure or refusal to carry out the terms of the order. The judgment may be enforced by any means available for the enforcement of judgments for other debts.

12. The Texas Youth Council is instructed by Section 54.04(e) to accept a child properly committed to it by a juvenile court even though the child may be 17 years of age or older at the time of commitment.

Once a court commits a child to T.Y.C., discretion as to the further disposition is vested in T.Y.C. and the court cannot invade this discretion by committing the juvenile for a definite period of time. In the Matter of A.N.M., 542 S.W.2d 916 (Tex. Civ. App.--Dallas 1976, no writ).

13. See In the Matter of E.F., 535 S.W.2d 213 (Tex. Civ. App.--Corpus Christi 1976, no writ). Article 5413d, Texas Revised Civil Statutes Annotated, provides:

> Sec. 13. (a) When the court commits a delinquent child to the Youth Council, it may order him conveyed forthwith by the Youth Council, or may direct that he be left at liberty until otherwise ordered by the Youth Council under such conditions as will insure his submission to any orders of the Youth Council.
>
> (b) The court shall assign an officer of other suitable person to convey such a child to any facility designated by the Youth Council, provided that the person assigned to convey a girl must be a woman. The cost of conveying any such child committed to the Youth Council shall be paid by the county from which said child is committed, provided that no compensation shall be allowed beyond the actual and necessary expenses of the party conveying the child conveyed.
> . . .
> Sec. 15. When a court commits a child to the Youth Council as a delinquent child, such court shall at once forward to the Youth Council a certified copy of the order of commitment, and the court, the probation officer, the prosecuting and police authorities, the school authorities, and other public officials shall make available to the Youth Council all pertinent information in this possession in respect to the case. The report required by this section shall, if the Youth Council so requests, be made upon

forms furnished by the Youth Council or according to an outline furnished by it.

14. If the child is not represented by an attorney, the court should give the parties notice of the child's rights concerning appeals and appoint counsel for the child unless waived. This situation should not arise because appeal lies only from those proceedings at which the child cannot waive the right to counsel. See generally, section on Appeals,

15. Section 54.10(b)

16. Section 54.041, new as of September 1, 1975, allows the juvenile judge to enter an order enjoining a person from having further contact with the juvenile. It is not an order against the child but rather against another person for contributing to the child's conduct.

17. The order must:

    a. contain a specific statement of the reasons for the disposition, including a recitation of the offense (In re T.R.W., 533 S.W.2d 139 (Tex. Civ. App.--Dallas 1976, no writ); In the Matter of A.N.M., 542 S.W.2d 916 (Tex. Civ. App.--Dallas 1976, no writ); and

    b. a copy must be given to the child. Section 54.04(f).

18. While there is probably no danger in allowing the probation officer to add minor conditions to those imposed in the order, the order should not recite that the probation is subject to terms and conditions set out by the probation office. Setting those terms and conditions is the responsibility of the judge. In the Matter of A.N.M., 542 S.W.2d 916 (Tex. Civ. App.--Dallas 1976, no writ).

    The juvenile judge probably has more discretion in setting conditions of probation than does the judge in an adult criminal case. In an adult case, when a jury recommends probation, the judge is limited to choosing from a statutory list of conditions. TEX. CODE CRIM. PROC. ANN. art. 42.12, sec. 3a (1965). No such restrictions are imposed by the Family Code.

Hearing to Modify Disposition[1]

1. Before the hearing:
   a. be sure the child has:
      (1) an attorney[2]
      (2) a guardian ad litem, if necessary[3]
   b. see that "reasonable notice"[4] has been given to:
      (1) the child
      (2) his parent, guardian or custodian
      (3) his attorney
      (4) his guardian ad litem, if any.
   c. see that counsel for child is given access to all reports and records relating to the child which will be considered by the court in the hearing.[5]
2. Hearing
   a. Determine whether all parties are present and see that it is noted in the record:
      (1) child
      (2) parents, guardian or custodian
      (3) guardian ad litem, if any
      (4) attorney for the child
      (5) attorney for the state
   b. Read the allegations of the petition and if necessary, explain them to the child and his

parent, guardian or guardian ad litem.

c. Explain the purpose and possible consequences of the hearing.

d. Receive the probation officer's written or oral report.[6]

e. Receive any other evidence, such as that of past and present activities of the child.

f. Allow the child's attorney to question the probation officer and other witnesses and present his own evidence.

g. Allow the parent's separate counsel, if any, to do the same.

h. Enter the order of modified disposition:[7]

(1) read in open court, then

(2) reduce to writing,[8] then

(3) file in the record

i. Instruct the child's attorney[9] to advise the child and his parent, guardian or guardian ad litem of the child's

(1) right to appeal;

(2) right to representation by counsel on appeal; and

(3) right to appointment of an attorney for the appeal if the child or his parents cannot afford one.

Footnotes--Hearing to Modify Disposition

1. Section 54.05. Unless waived, a hearing must be held to modify disposition (such as discharging the child from probation or revoking probation and committing the child to the Texas Youth Council). It may be instigated on the petition of

   a. the child and his parent, guardian, guardian ad litem or attorney;
   b. the state;
   c. a probation officer; or
   d. the court itself.

   If the petition seeks a modified disposition other than commitment to the Texas Youth Council, the hearing may be waived by the child and his:

   a. parent,
   b. guardian,
   c. custodian,
   d. guardian ad litem, or
   e. attorney.

   The waiver must be:

   a. made only after the parties waiving are informed of the right to a hearing and understand that right and the possible consequences of waiving it;
   b. voluntary; and
   c. made in writing or in court proceedings that are recorded.

   A disposition may not be modified if:

   a. the child has been committed to the Texas Youth Council;
   b. the child has reached his 18th birthday (all dispositions automatically terminate when the child reaches his 18th birthday); or
   c. the child has earlier been discharged by the court.

   There is no right to a jury at a hearing to modify disposition. In re E.B., 525 S.W.2d 543 (Tex.Civ.App.--Amarillo 1975, no writ)

2. See section on Appointment of Counsel (1.03.28). The presence of counsel at the hearing may not be waived if

the original disposition was based on an adjudication that the child had engaged in delinquent conduct. Section 51.10(b)(4).

3. See section on Guardian ad Litem.

4. No specific form of notice is required. For the protection of all involved written notice should be given and filed in the record. In re D.E.P.512 S.W. 2d 789 (Tex.Civ.App.--Houston [14th Dist.] 1974, no writ); Franks v. State, 498 S.W. 2d 516 (Tex.Civ.App.--Texarkana 1973, no writ)

5. The court may order counsel not to reveal items to the child or his parent, guardian, or guardian ad litem if such disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future. Section 54.05(3).

6. [T]he court may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses. Section 54.05(e).

7. A disposition may be modified so as to commit the child to the Texas Youth Council only if:

   a. the child has been adjudicated to have engaged in *delinquent conduct;*
   b. the court holds a hearing as outlined in this section (it cannot be waived in this situation); and
   c. at that hearing, the court finds
      (1) beyond a reasonable doubt that
      (2) the child violated a reasonable and lawful order of the court. Section 54.05(f). In re D.E.P., 512 S.W. 2d 789 (Tex.Civ.App.--Houston [14th Dist.] 1974, no writ); Matter of Hartsfield, 531 S.W.2d 149 (Tex. Civ. App.--Tyler 1975, no writ); In re J.L.D., 536 S.W.2d 685 (Tex. Civ. App.--Houston [1st Dist] 1976, no writ)

If the child has been adjudicated of having engaged only in conduct indicating a need for supervision and the court desires to modify the original disposition so as to commit the child to the Texas Youth Council, a new

petition must be filed and a new Adjudication Hearing held. In re A.L.H., 517 S.W.2d 652 (Tex.Civ.App.--Houston [1st Dist.] 1974 no writ).

8. The order must:

   a. contain a specific statement of the reasons for modifying the disposition, and
   b. a copy must be given to the child. Section 54.05(i).

9. If the child is not represented by an attorney, the court should give the parties notice of the child's rights concerning appeals and appoint counsel for the child unless waived. This situation should not arise because appeal lies only from those proceedings at which the child cannot waive the right to counsel. See generally, section on Appeals.

PROCEEDINGS CONCERNING CHILDREN WITH MENTAL ILLNESS, RETARDATION, DISEASE OR DEFECT

Mentally Ill Child[1]

1. If a child before the court[2] appears to be mentally ill,[3] it must conduct a hearing[4] to determine whether the child should be temporarily committed[5] to a mental health facility. The steps in this procedure are:

   a. A sworn Application for Temporary Hospitalization is filed by the juvenile court judge. The Application shall state upon information and belief that:

      (1) the child is not charged with a criminal offense;

      (2) he is mentally ill;

      (3) for his own welfare and protection or the protection of others he requires observation and/or treatment in a mental hospital.[6]

   b. If the child has no attorney, the judge must appoint an attorney for him. See section on Appointment of Counsel. The right to an attorney cannot be waived.

c. The child must be examined by two physicians. Certificates of Medical Examination for Mental Illness from each of them must be filed in the record.

(1) Each of these Certificates must state:

(a) that the child was examined by the physician within 5 days of the date the Certificate was filed; and

(b) that the child is mentally ill and requires observation and/or treatment in a mental hospital.[7]

(2) The judge may appoint the physicians if necessary, one of whom shall be a psychiatrist if one is available to the county.[8]

(3) The judge may order the child to submit to the examination.[8]

d. The judge shall set a date for a hearing to be held within 14 days of the filing of the Application.[9]

e. The child must be personally served with:

(1) a copy of the Application,

(2) written notice of the time and place of the hearing; and

(3) the order to submit to examination, if any.[10]

f. By registered mail, the child's parent, guardian, custodian or a responsible relative must be sent:
   (1) a copy of the Application, and
   (2) written notice of the time and place of the hearing.

g. See that the attorney or attorney ad litem for the child is given access to all records and papers in the case including all hospital and doctors' records.[10]

h. An informal hearing shall be held on the Application for Temporary Hospitalization.[11]
   (1) Determine whether all parties are present and see that it is noted in the record:
      (a) child
      (b) parents, guardian or custodian
      (c) guardian ad litem, if any
      (d) attorney or attorney ad litem for the child
      (e) attorney for the state, if any.
   (2) Explain the purpose and possible consequences of the hearing.
   (3) Ask if anyone present opposes temporary hospitalization of the child explaining that if no one does, the court will make its decision based upon the Certificates of Medical Examination for Mental Illness on file with the court.

(4) If the Application is opposed by anyone present,

(a) receive the Certificates into evidence,

(b) allow the presentation of any other evidence (witnesses and exhibits) by any party appearing in favor of temporary hospitalization

(c) allow the questioning of these witnesses, if any, by the parties opposing temporary hospitalization.

(d) allow any party who opposes hospitalization to present his evidence (witnesses and exhibits)

(e) allow the questioning of these witnesses, if any, by the parties in favor of hospitalization.

(f) allow rebuttal evidence, if any, to be presented, first by parties in favor of hospitalization, then by parties opposing hospitalization.

(g) allow the parties in favor of hospitalization to make closing arguments

(h) allow the parties opposed to hospitalization to make closing arguments

(i) allow the parties in favor of hospitalization to make final closing arguments.

i. If the court decides that the child is not mentally ill or does not require observation and/or treatment in a mental hospital,

(1) The court should enter an order, orally and in writing for the record, denying the Application

(2) Regular juvenile court proceedings should continue from the point at which they were halted for the mental illness proceedings.

j. If the court decides that the child is mentally ill and requires observation and/or treatment in a mental hospital for his own welfare and protection or the protection of others,

(1) The court should enter an order that the mentally ill child be committed as a patient for observation and/or treatment in a mental hospital or to submit to other treatment, observation or care for a period not exceeding 90 days;[12]

(2) The regular proceedings in the juvenile court are stayed[13]

(3) The court should authorize a person to transport the patient to the mental hospital[14]

(4) The court should direct the clerk of the court to issue a writ of commitment in duplicate directed to the person authorized to transport the patient, commanding him to take charge

of the patient and transport him to the designated mental hospital.[15]

(5) The court should direct the clerk to prepare two certified transcripts of the proceedings in the temporary hospitalization hearing. One copy each of this transcript and any available information concerning the medical, social and economic status and history of the child and his family must be sent to:

(a) the Texas Department of Mental Health and Mental Retardation; and

(b) the head of the hospital to which the child is committed.[16]

k. Instruct the child's attorney[17] to advise the child and his parent, guardian or guardian ad litem of the child's

(1) right to appeal;

(2) right to representation by counsel on appeal; and

(3) right to appointment of an attorney for the appeal if the child or his parents cannot afford one.

2. The child will be cared for, treated and released in conformity to the Texas Mental Health Code,[18] except:

(1) an order for temporary hospitalization automatically expires when the child becomes 18 years of age and

(2) the mental hospital must notify the juvenile court at least 10 days prior to discharging a child committed to it by that court, and the court may:

(a) dismiss the juvenile court proceedings with prejudice; or

(b) continue with the juvenile proceedings.[19]

Footnotes--Mentally Ill Child

1. Section 55.02

2. After a petition has been filed, or the child adjudicated of having engaged in delinquent conduct or conduct indicating a need for supervision.

3. "Mentally ill person" means a person whose mental health is substantially impaired; a person of "unsound mind." Article 5547-4, Texas Revised Civil Statutes Annotated.

4. The proceedings are conducted as though the juvenile court were a county court and the child were before it on petition of a parent or some other person.

5. The proceedings are governed by the Texas Mental Health Code, specifically Articles 5547-31 through 5547-39, Texas Revised Civil Statutes Annotated.

6. Article 5547-31, Texas Revised Civil Statutes Annotated.

7. Article 5547-32(a), Texas Revised Civil Statutes Annotated.

8. Article 5547-32(b), Texas Revised Civil Statutes Annotated.

9. Article 5547-32(c), Texas Revised Civil Statutes Annotated. Pending the hearing, the child may remain at liberty unless he is already a patient in a mental hospital or is placed under protective custody. Article 5547-33.

10. Article 5547-33, Texas Revised Civil Statutes Annotated.

11. Article 5547-36 provides:

a. The Judge may hold the hearing on an application for Temporary Hospitalization at any suitable place within the county. The hearing should be held in a physical setting not likely to have a harmful effect on the mental condition of the proposed patient in the event he is present.

b. The proposed patient is not required to be present at the hearing, but he shall not be denied the right to be present.

c. The Court may exclude all persons not having a legitimate interest in the proceedings, provided the consent of the proposed patient first shall have been obtained.

d. The hearing shall be conducted in as informal a manner as is consistent with orderly procedure.

e. The hearing shall be before the Court without a jury, unless a jury is demanded by a person authorized to make such demand or by the proposed patient or by the Court. Provided, however, the hearing must be before a jury in the case of a proposed patient who is charged with a criminal offense.

12. Article 5547-38, Texas Revised Civil Statutes Annotated. If to a hospital, this order must state that commitment is to a specific

    a. State mental hospital;
    b. private mental hospital (see Article 5547-59);
    c. agency of the United States operating a mental hospital. (see Article 5547-60).

13. Section 55.02(d), Texas Family Code.

14. See Article 5547-61, Texas Revised Civil Statutes Annotated.

15. Article 5547-62, Texas Revised Civil Statutes Annotated.

16. Article 5547-63, Texas Revised Civil Statutes Annotated.

17. If the child is not represented by an attorney, the court should give the parties notice of the child's rights concerning appeals and appoint counsel for the child unless waived. This situation should not arise because appeal lies only from those proceedings at which the child cannot waive the right to counsel. See generally, section on Appeals.

18. Section 55.02(c)

19. Section 55.02(e)

Mentally Retarded Child[1]

1. If a child before the court[2] appears to be mentally retarded,[3] it must conduct a hearing[4] to determine whether the child should be declared mentally retarded and committed to a facility for the care and treatment of mentally retarded persons. The steps in this procedure are:
   a. A sworn application to have the child declared mentally retarded and admitted to the jurisdiction of the Texas Department of Mental Health and Mental Retardation is filed by the juvenile court judge.
   b. If the child has no attorney, the judge must appoint an attorney for him. See section on Appointment of Counsel. The right to an attorney cannot be waived.
   c. The child must be examined at a diagnostic center as provided by Article 3871b(13), Texas Revised Civil Statutes Annotated.
   d. The judge shall set a date for the hearing.
   e. Notice of the time, place and purpose of the hearing, and a brief statement of the matters stated in the application should be served on:

(1) the parents, spouse, guardian, custodian or nearest relative of the child;

(2) the attorney for the child; and

(3) the child's guardian ad litem, if any.

f. An informal hearing shall be held on the application[6]

(1) Determine whether all parties are present and see that it is noted in the record:

(a) child

(b) parents, guardian or custodian

(c) guardian ad litem, if any

(d) attorney or attorney ad litem for the child

(e) attorney for the state, if any.

(2) Explain the purpose and possible consequences of the hearing.

(3) Ask if anyone present opposes the child being declared mentally retarded and committed to a facility for the care and treatment of mentally retarded persons, explaining that if no one does, the court will make its decision based upon the affidavit of the person in charge of the examination which the child took at the diagnostic center.

(4) If the Application is opposed by anyone present,

(a) receive the affidavit into evidence,[7]

(b) allow the presentation of any other evidence (witnesses and exhibits) by any party appearing in favor of the application.

(c) allow the questioning of these witnesses, if any, by the parties opposing the application.

(d) allow any party who opposes the application to present his evidence (witnesses and exhibits)

(e) allow the questioning of these witnesses, if any, by the parties in favor of the application.

(f) allow rebuttal evidence, if any, to be presented, first by parties in favor of the application, then by parties opposing the application

(g) allow the parties in favor of the application to make closing arguments

(h) allow the parties opposed to the application to make closing arguments

(i) allow the parties in favor of the application to make final closing arguments.

g. If the court decides that the child is not mentally retarded,

(1) The court should enter an order, orally and in writing for the record, denying the application

(2) Regular juvenile court proceedings should continue from the point at which they were halted for the mental retardation proceedings.

h. If the court decides that the child is mentally retarded,

(1) the court should enter an order

(a) declaring that fact and

(b) that the child is admitted to the jurisdiction of the Texas Department of Mental Health and Mental Retardation.[8]

(2) The regular proceedings in the juvenile court are stayed.[9]

(3) If the Department of Mental Health and Mental Retardation notifies the judge that facilities for the mentally retarded child are available, the court should authorize a person to transport the child to the institution designated

by the Department.

(4) The judge should direct the clerk to prepare a transcript of the proceedings and evidence, all of which the judge shall certify to be correct, and transmit it to the Department.[10]

i. Instruct the child's attorney[11] to advise the child and his parent, guardian or guardian ad litem of the child's

(1) right to appeal;

(2) right to representation by counsel on appeal; and

(3) right to appointment of an attorney for the appeal if the child or his parents cannot afford one.

2. The child will be cared for, treated and released in conformity to the Mentally Retarded Persons Act,[12] except the juvenile court must be notified at least 10 days prior to discharge of the child and if the child is under 18 years of age, the court may:

a. dismiss the juvenile court proceedings with prejudice; or

b. continue with the juvenile proceedings.[13]

Footnotes--Mentally Retarded Child

1. Section 55.03

2. After a petition has been filed, or the child adjudicated of having engaged in delinquent conduct or conduct indicating a need for supervision.

3. "Mentally retarded person" means any person, other than a mentally ill person, so mentally deficient from any cause as to require special training, education, supervision, treatment, care or control for his own or the community's welfare. Article 3871b(3)(1), Texas Revised Civil Statutes Annotated.

4. The proceedings are conducted as though the juvenile court were a county court and the child were before it on petition of a parent or some other person.

5. The proceedings are governed by Article 3871b, Texas Revised Civil Statutes Annotated.

6. Any person interested in the application has the right to appear and be represented by counsel. Any interested person may demand a jury, or the judge of the court on his own motion may order a jury. Article 3871b(5).

7. Article 3871b(7) provides,

> An affidavit of the person in charge of the examination of the alleged mentally retarded person at the diagnostic center setting forth the conclusions reached as a result of the examination is admissible in evidence at the hearing. The court shall cause this affidavit to be introduced in evidence at the hearing, and shall not render judgment in the matter unless this evidence is available and introduced.

8. Article 3871b(8), Texas Revised Civil Statutes Annotated.

9. Section 55.03(d), Texas Family Code.

10. Article 3871b(8), Texas Revised Civil Statutes Annotated.

11. If the child is not represented by an attorney, the court should give the parties notice of the child's rights concerning appeals and appoint counsel for the child unless waived. This situation should not arise because appeal lies only from those proceedings at which the child cannot waive the right to counsel. See generally, section on Appeals.

12. Article 3871b, Texas Revised Civil Statutes Annotated.

13. Section 55.03(e).

Mental Disease or Defect Excluding Fitness to Proceed[1]

1. If it appears to the court[2] that a child on which a petition or motion to transfer to criminal court has been filed, may be unfit to proceed, the court should:
   a. "order appropriate medical and psychiatric inquiry to assist in determining whether the child is unfit to proceed because of mental disease or defect."[3]
   b. hold a hearing to determine whether the child is fit or unfit to proceed.[4] This hearing:
      (1) should be separate from the adjudication or transfer hearing;
      (2) should be generally conducted in accordance with the requirements of an adjudication hearing (see section on Adjudication Hearing)[5]; and
      (3) may be joined with proceedings to order temporary hospitalization of a mentally ill child (see section on Mentally Ill Child) or proceedings to commit a mentally retarded child (see section on Mentally Retarded Child)

2. If the court or jury determines that the child is fit to proceed, the regular juvenile proceedings are to continue as though no question of fitness to proceed had arisen.[6]

3. If the court or jury determines that the child is not fit to proceed, a further determination should be made to:

   a. commit the child for a period of temporary hospitalization for observation and treatment as outlined in the section on Mentally Ill Child; or

   b. commit the child to a facility for mentally retarded persons as outlined in the section on Mentally Retarded Child.

Footnotes--Mental Disease or Defect Excluding Fitness to Proceed

1. Section 55.04. A child may not be subjected to transfer to a criminal court, adjudication, disposition or modification of disposition if he is mentally incapable of understanding the proceedings and assisting in his defense. Dominquez v. State, ___ S.W.2d ___ (Tex. Civ. App.--Austin #12,492, 2/2/77).

2. "...on suggestion of a party or on his own notice..." Section 55.04(b).

3. Section 55.04(b).

4. Section 55.04(c).

5. The evidence at the hearing should include the report of the psychiatric inquiry previously ordered. Unfitness to proceed must be proved only by the civil standard, "a preponderance of the evidence."

6. Section 55.04(d).

Mental Disease or Defect Excluding Responsibility[1]

1. If it appears to the court[2] that a child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision may not be responsible as a result of mental disease or defect, the court should:
   a. "order appropriate medical and psychiatric inquiry to assist in determining whether the child is or is not responsible."[3]
   b. try the issue of responsibility for conduct in the adjudication hearing.[4]
2. If the court or jury determines that the child was responsible for his conduct, the regular juvenile proceedings are to continue as though no question of mental disease or defect excluding responsibility had arisen.[5]
3. If the court or jury determines that the child was not responsible for his conduct as a result of mental disease or defect,
   a. the adjudication hearing findings or verdict must state that finding,[6]
   b. the court should dismiss the juvenile proceedings with prejudice, and
   c. initiate proceedings to either:
      (1) commit the child for a period of temporary

CONTINUED

2 OF 5

hospitalization as outlined in the section on Mentally Ill Child; or

(2) commit the child to a facility for mentally retarded persons as outlined in the section on Mentally Retarded Child.[7]

Footnotes--Mental Disease or Defect Excluding Responsibility

1. Section 55.05. This section provides for dealing with the insanity defense, should it arise in juvenile proceedings. The principle of the defense is stated in subsection (a):

> A child is not responsible for delinquent conduct or conduct indicating a need for supervision if at the time of such conduct, as a result of mental disease or defect, he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

2. "...on suggestion of a party or on the court's own notice..." In the Matter of A.N.M., 542 S.W.2d 916 (Tex. Civ. App.--Dallas 1976, no writ); Meza v. State, 543 S.W.2d 189 (Tex. Civ. App.--Austin 1976, no writ).

3. Section 55.05(b).

4. Section 55.05(c). Mental disease or defect which excludes responsibility must be proved by a preponderance of the evidence.

5. Section 55.05(f).

6. Section 55.05(e).

7. Section 55.05(g).

FORMS

This collection of forms is included only for reference and to provide examples. Caution must be used when any prepared legal form is utilized. No two cases are alike and the words on a printed form may not exactly fit the facts in a particular case.

JUVENILE DETENTION FACILITY CERTIFICATION

STATE OF TEXAS
COUNTY OF _____

We, the undersigned, hereby certify to the Commissioners' Court of _____ County, Texas, that we have personally inspected the detention facilities at _____, _____, _____, Texas, to determine whether the facility is suitable for detention of children as provided by Section 51.12(c) of the Texas Family Code.

We hereby find that:

1. Children in detention are not detained in or committed to a compartment of a jail in which adults are detained or committed;

2. Children in detention are not permitted contact with adults detained or committed to a jail;

3. The detention facility meets the requirements of Article 5115, Revised Civil Statutes of Texas, 1925, as amended, defining "safe and suitable jails";

4. The detention facility meets recognized professional standards for the detention of children as provided by Section 51.12(c) (3) of the Texas Family Code; and

THEREFORE, THE _____ is hereby certified a suitable facility for children until the next annual onsite inspection due one year from the above personal visit. The Commissioners' Court of _____ County shall be furnished copies of said certification.

Inspected this _____ day of _____, 197___.

JUVENILE COURT JUDGE

_____
(court)

_____ COUNTY JUVENILE BOARD

BY: _____

_____
(title)
CHAIRMAN

_____
(name)

_____
(title)

_____
(name)

_____
(title)

COMPLAINT (COMPULSORY SCHOOL ATTENDANCE)

No._____

STATE OF TEXAS
COUNTY OF _____

IN THE _____COURT
OF _____COUNTY

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS

Before me, the undersigned authority, on this day personally appeared _____ who, after being by me duly sworn on oath deposes and says that he has personal knowledge (or has good reason to believe and does believe, based on the following information (state the information on which the belief is based))_____

_____

_____

_____

_____

_____

_____

_____

and that he charges that heretofore, and before the making and filing of this complaint on or about the _____ day of _____, 19___ in the County and State aforesaid, was then and there the parent (or other person standing in parential relationship) of _____, a child, with in the compulsory school attendance ages, to wit, _____years of age, date of birth _____, and after having therefore been warned by _____, the attendance officer having jurisdiction in the territory where _____(parent) there resided, that the said _____(parent or guardian) must immediately require the said _____ to attend a school regularly as required by law, he, the said _____ _____(parent or guardian) did then and there unlawfully and willingly fail and refuse to require _____ _____ to attend school at _____ as required by law, the said _____(child)

then and there not being properly excused from attendance upon school for any exemption provided by law.

Against the Peace and Dignity of the State.

_____
(Complainant)

Sworn to and subscribed before me by _____,

this the _____ day of _____, 19 ___.

_____

_____

WARNING NOTICE

This is to inform you that _____(child), _____(address) was [observed engaging in/ believed to have engaged in] [delinquent conduct/conduct indicating a need for supervision] in that on _____ ___, 19___, at ___:___ __.m. he/she: (describe alleged conduct)

No further action will be taken at this time but a copy of this notice will be filed with _____(office or official designated by the juvenile court).

_____
Officer Issuing Warning

Parent, Guardian or Custodian:

Name_____

Address_____

_____

Telephone_____

NOTICE OF TAKING CHILD INTO CUSTODY

TO: _____
Parent, guardian or custodian

_____
Address

This is to inform you that _____(child), _____(address) was [observed engaging in/ believed to have engaged in] [delinquent conduct/conduct indicating a need for supervision] within the meaning of Title 3 of the Texas Family Code in that on _____ _____, 19___, at __:___ ___.m. he/she: (describe alleged conduct)

For this reason, the said child was taken into custody and is now being held in custody at _____, _____/ was released to parent, guardian or custodian noted above.

_____
Officer

CERTIFICATE

This is to certify that the above and foregoing NOTICE OF TAKING Â CHILD INTO CUSTODY was delivered by me to the parent, guardian, or custodian named above and to the Juvenile Probation Office.

_____
Officer

CONDITIONS OF RELEASE

TO WHOM IT MAY CONCERN:

I, _____, parent, guardian, custodian, or other person, hereby assume the responsibility for seeing that _____ will appear at the Juvenile Court of _____ County, Texas at the time and date to later be designated by _____ of the _____ _____.

_____
Parent, Guardian, Custodian or other person

Time _____
Date _____

OFFICER'S REPORT TO JUVENILE COURT

Date _____

Name of Person taken into custody _____

Address _____

Parent's Name _____ Phone _____

Parent's Address _____ Time _____ A.M. P.M.

Sex _____ DOB _____ Age _____

Occupation _____

Where taken into custody _____

Violation suspected _____

Date violation committed _____ Where _____

Name of complainant _____ Phone _____

Address of complainant _____

Give complete details as to what you know, what you saw or what you were told about Juvenile which prompted this investigation.

_____

_____

_____

_____

_____

_____

Have parents been notified? Yes_____ No_____

Officers _____

14.010

NOTICE AND WAIVER OF RIGHTS

No._____

STATE OF TEXAS,
COUNTY OF _____

BEFORE ME, the undersigned, _____ of the _____, Department, _____, _____ County, Texas, on this day personally appeared _____, a __male child of the age of _____ years, and the said child was given the following warnings by me:

1. You are charged with having engaged in delinquent conduct/conduct indicating a need for supervision within the provisions of Section 51.03, Texas Family Code, by reason of your having allegedly committed the following violation:

   _____

   _____

   A petition fully alleging the facts which bring you within the provisions of this Code may be filed in the Juvenile Court of _____ County, Texas.

2. You have a right to hire a lawyer and have him present to advise you prior to and during any questioning and if you are unable to employ a lawyer, you have the right to request the appointment of a lawyer to be present prior to and during any interview and questioning. You may have a reasonable time and opportunity to consult with your lawyer if you desire.

3. You have the right to remain silent.

4. You are not required to make a statement and any statement you make can and may be used against you in court. There is no penalty for refusing to make a statement.

5. You have the right to stop any interview or questioning at any time.

Place of Warning:_____ Person Issuing Warning:_____

_____ _____

Date:_____

Time:_____

Child: I have been given the above warnings by _____ _____, the person named above, and I fully and clearly understand them as all have been fully and clearly explained to me.

_____ _____

Witness Child

_____ _____

Witness Parent, Guardian or Custodian

☐ If a check appears in the box to the left, the child was given the warnings but declined to sign.

Having had the above rights read and explained to us, we fully and clearly understand these rights and the possible consequences of waiving these rights, and do hereby knowingly, intelligently and voluntarily waive these rights prior to making any statement.

_____

Child

_____

Attorney for the Child

14.012

CONSENT TO INFORMAL ADJUSTMENT

TO WHOM IT MAY CONCERN:

I, _____, and _____, my parents, guardian or custodian, hereby voluntarily consent and agree to meet with officials of the _____ periodically for a reasonable period of time, not to exceed six months, for the purpose of discussing informal adjustment of the complaint which has been brought against me. I and my parents/guardian/custodian furthermore acknowledge that:

1. We understand that we are not obligated in any manner to consent to the informal adjustment process.

2. We understand that any information obtained from us in discussions and conferences during the process of informal adjustment will not be used against either of us in any future court hearing.

3. We understand that we may withdraw from the adjustment process at any time.

4. We understand that the effort at informal adjustment will not prevent the filing of a petition at a future date.

5. We understand that the fact we are participating in informal adjustment does not constitute an adjudication of delinquent conduct or conduct indicating a need for supervision and that if we at any point wish to dispute allegations that have been made and have the facts determined by the court at a hearing, no further effort will be made at informal adjustment.

Date_____

_____
Child

_____

_____
Parents/Guardian/Custodian

PETITION

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

TO THE HONORABLE JUDGE IN SAID COURT:

NOW COMES _____, the _____ Attorney of _____ County, Texas, and presents this petition on behalf of the State of Texas against _____, who is now alleged to have engaged in delinquent conduct/ conduct indicating a need for supervision, and for cause respectfully shows to the court that he has information and reason to believe and does believe that:

I.

Said _____ is a child, to-wit: a male/ female _____ years of age, whose residence is _____ _____(street), _____(city), _____ County, Texas.

II.

The parents/guardian/custodian/nearest known adult relative of said child and their residence are as follows:

_____ _____ _____, Texas

_____ _____ _____, Texas

III

The said child engaged in delinquent conduct, to wit: That on or about the _____ day of _____, 19___, the said child violated a penal law of this State punishable

by imprisonment/confinement in jail, to wit: Article _____ of the Texas Penal Code, in that __he did then and there

_____

OR

_____

The said child engaged in delinquent conduct, to wit: That on or about the _____ day of _____, 19___, the said child violated a reasonable and lawful order of a juvenile court entered under Section 54.04 of the Texas Family Code, in that __he did then and there

Said conduct was a violation of a reasonable and lawful order of a juvenile court entered on the ____ day of _____ _____, 19___, a copy of which said order is attached hereto and made a part hereof as if it were copied herein verbatim.

_____

OR

_____

The said child engaged in conduct indicating a need for supervision, to wit:

_____

WHEREFORE, premises considered, it is respectfully prayed that this cause be set down for a hearing on some day and date and at a place to be fixed by the Court; that the Court issue a summons to the parties named herein, including a copy of this petition, and requiring the persons named herein who have the custody and control of the said child to appear personally before this Court and to bring said child before this Court, at the time and place stated and directed by the Court as the time and place for the trial of this cause and that the parents, guardian or custodian of said child be notified of the pendency of this cause and of the time and place appointed by the Court for trial hereof.

It is further prayed that this Honorable Court, by order endorsed on said summons, shall authorize the officer serving the same to at once take said child into custody.

It is further prayed that upon a final hearing hereof, said child be adjudged to have engaged in delinquent conduct/ conduct indicating a need for supervision and that such disposition of the care, control, and custody of said child be made as to this Court appears just and proper.

Respectfully submitted,

_____

_____Attorney

_____County, Texas

By _____

_____Attorney

14.016

SUMMONS-ADJUDICATION

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

TO: _____.

YOU ARE HEREBY COMMANDED TO SUMMON:

The child, _____ who resides at _____

_____

The parents, _____,

who reside at _____

The guardian or custodian, _____ who

resides at _____

The guardian ad litem, _____, who

resides at _____

_____, who resides at _____

to appear before the Juvenile Court of _____
County, Texas, to be held at _____ in _____
_____, _____ County, Texas, on the _____ day of
_____, A.D. 19___, at _____o'clock, ___.M.,
then and there to answer the petition of _____
and to show cause if any there be why the above named should not be adjudged to have engaged in delinquent conduct/conduct indicating a need for supervision. The said petitioner alleges the facts set out in the petition attached hereto and which is made a part hereof, which facts he says constitutes the said _____ as a child having engaged in delinquent conduct/conduct indicating a need for supervision.

SUMMONS-WAIVER OF JURISDICTION

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

TO: _____.

YOU ARE HEREBY COMMANDED TO SUMMON:

The child, _____ who resides at _____

_____.

The parents, _____,

who reside at _____

The guardian or custodian, _____ who

resides at _____

The guardian ad litem, _____ who

resides at _____

to appear before the Juvenile Court of _____
County, Texas, to be held at _____ in _____
_____, _____ County, Texas, on the _____ day of
_____, A.D. 19__, at _____ o'clock, ___.M.,
then and there to answer the petition of _____ which is
attached hereto and which is made a part hereof.

The purpose of the hearing is to consider waiver of jurisdiction by the juvenile court and discretionary transfer to criminal court.

(SUMMONS-second page)

HEREIN FAIL NOT, Under penalty of the law and of this writ to make due return on the _____ day of _____, A.D., 19___.

WITNESS, _____,Clerk of said Court, and the seal thereof, at office in the City of _____, _____ County, Texas, this the _____ day of _____, A.D. 19___.

_____
Clerk, Juvenile Court

_____County, Texas

BY_____
Deputy

ORDER

IT IS HEREBY ORDERED that _____ (the parent, guardian or custodian of the child) appear personally at the hearing and to bring the child to the hearing. A person who violates this order may be proceeded against under Section 54.07 of the Family Code for contempt.

SIGNED AND ENTERED this _____ day of _____, 19___.

_____
Juvenile Court Judge

RETURN

1. A true copy of this summons was served upon the following at the times and dates indicated:

The Child _____o'clock __.m. _____ day of _____, 19___

The Parents _____o'clock __.m. _____ day of _____, 19___

The guardian or custodian _____o'clock __.m. _____ day of _____, 19___

The guardian ad litem _____o'clock __.m. _____ day of _____, 19___

_____
Officer

2. Being unable to find the following, a copy of this summons was mailed to him/her at the address indicated on the date indicated, but at least 5 days before the day of the hearing, by certified mail, return receipt requested:

	Address	Date
The parents:	_____	_____
The guardian or custodian	_____	_____
The guardian ad litem	_____	_____

_____
Officer

3. I was unable to find the following or their post office address after a reasonable effort.

_____

_____
Officer

14.020

ANSWER

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

Now comes _____, Respondent Child in the above entitled and numbered cause and files this his/her answer to Plaintiff's Original Petition filed herein, and for such answer would respectfully show the Court the following:

I.

Respondent Child denies each and every, all and singular, the allegations contained in Plaintiff's Original Petition and demands strict proof thereof.

WHEREFORE, PREMISES CONSIDERED, Respondent Child prays that Plaintiff take nothing by his action, and such other and further relief as Respondent Child may be entitled either in equity or in law.

_____
Attorney for the Child

AFFIDAVIT FOR ORDER OF IMMEDIATE CUSTODY

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

I, _____, hereby solemnly swear that _____, the child in the above-entitled and numbered cause:

_____ is likely to abscond or be removed from the jurisdiction of the court

_____ is not being provided suitable supervision, care and protection by a parent, guardian, custodian or other person

_____ has no parent, guardian custodian or other person able to return him to the court when required

and that there is probable cause to believe that he engaged in the conduct alleged in the petition attached hereto as shown by the existence of the following facts:

_____

_____

Wherefore, I request that said Court issue an Order of Immediate Custody.

_____

STATE OF TEXAS,
COUNTY OF _____:

Before me, the undersigned authority, on this day personally appeared _____ who being by me duly sworn, upon his oath deposed and said that he is the

party who subscribed his name to the above and foregoing instrument and that the matters stated therein are true and correct.

NOTARY PUBLIC, _____County

ORDER OF IMMEDIATE CUSTODY

No. _____

STATE OF TEXAS
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

In the _____ Court of _____ County, Texas, on this _____ day of _____ A.D. 19___, it having been made known to the Court that _____ a child under the age of _____ years, is charged in a petition filed by _____ with having engaged in delinquent conduct/conduct indicating a need for supervision.

Further it appears that said child:

_____ is likely to abscond or be removed from the jurisdiction of the court

_____ is not being provided suitable supervision, care and protection by a parent, guardian, custodian or other person

_____ has no parent, guardian custodian or other person able to return him to the court when required.

and that there is probable cause for the taking of the child into custody.

It is therefore ordered that any Probation Officer or Peace Officer take the said _____ and bring him/her before the court.

_____
Judge of the

_____Court,

_____County, Texas

Sitting as a Juvenile Court in
Said County

RETURN

Received this writ on the _____ day of _____ A.D., 19_____, and executed same on this _____ day of _____ A.D., 19___, by taking the said _____ _____ and placing said child in the care, custody and control of _____, _____ County, Texas, as commanded to said writ.

_____

_____County, Texas

ORDER APPOINTING GUARDIAN AD LITEM

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

The child having appeared before the juvenile court without a parent or guardian; or

It appearing to the juvenile court that the child's parent or guardian is incapable or unwilling to make decisions in the best interest of the child with respect to proceedings under Title 3 of the Family Code;

It further appearing that _____ is a person qualified to be a guardian ad litem and not a law enforcement officer, probation officer, or other employee of the juvenile court;

IT IS THEREFORE ORDERED that _____ be and he is hereby appointed as guardian ad litem for the child.

SIGNED AND ENTERED this _____ day of _____, 19___.

_____

Judge of the _____ Court,

_____ County, Texas,

Sitting As a Juvenile Court in Said County

14.026

AFFIDAVIT WAIVING PAYMENT OF FEES

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES _____, who was appointed by this Court on the ___ day of _____, 19___, to represent the interests of _____ as his/her Guardian ad Litem in the above entitled and numbered cause and would make known to the Court that he accepts said appointment and all responsibilities which attach thereto, and further makes known to the Court that he waives payment of any and all fees to which he might be entitled under Rule 173, Texas Rules of Civil Procedure.

PRESENTED this _____ day of _____, 19___.

_____

STATE OF TEXAS,
COUNTY OF _____:

Before me, the undersigned authority, on this day personally appeared _____ who being by me duly sworn, upon his oath deposed and said that he is the party who subscribed his name to the above and foregoing instrument and that the matters stated therein are true and correct.

_____
NOTARY PUBLIC, _____County

PAUPER'S AFFIDAVIT

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

I, _____, the child in the above styled and numbered cause, and _____, and _____, the parents (guardian) of said child, hereby solemnly swear that we and each of us do not have sufficient money or other property to employ counsel to represent the above-named child in this case.

_____
Child

_____
Parent (Guardian)

_____
Parent (Guardian)

Before me, the undersigned Deputy-_____ Clerk, on this _____ day of _____, A.D. 19___, personally appeared _____, _____ and _____ who subscribed the foregoing instrument, and after having been by me duly sworn, stated on their oaths that the foregoing statemtnts are true and correct.

_____
Deputy-_____ Clerk

_____County, Texas

ORDER APPOINTING ATTORNEY

On this, the _____ day of _____, A.D. 19___, came on to be heard the above sworn affidavit, and the Court having determined that the child is not represented by counsel and that the child, his/her parents (guardian) do not have sufficient money or other property to employ counsel, the Court hereby appoints _____, a practicing

Attorney of _____ County, Texas, to represent the said child in the above numbered and styled case.

_____

Judge of the _____ Court,

_____ County, Texas,

Sitting As a Juvenile Court in Said County

WAIVER OF SUBSEQUENT DETENTION HEARING

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

We, _____, the child in the above styled and numbered cause and _____, his attorney, hereby waive the child's right to a subsequent detention hearing, the child having been first detained after a hearing held on the _____ day of _____, 19___. The child's right to have a detention hearing and the purpose of a detention hearing have been explained to us and we understand these rights and the possible consequences of waiving these rights and knowingly, voluntarily and intelligently waive the right to have a subsequent detention hearing.

_____
Child

_____
Attorney for the Child

ORDER OF DETENTION

On this the _____ day of _____, 19___, the above Waiver of Subsequent Detention Hearing was presented to the Court and having examined the same the Court finds that the waiver is made by the child and the attorney for the child, that the child and the attorney for the child were informed of and understand the right and the consequences of waiving the right to a subsequent detention hearing and that the waiver is voluntary.

IT IS THEREFORE THE ORDER of this Court that the child, _____, be and he is hereby placed in the custody of the juvenile court at the detention facility previously approved by the Juvenile Board of _____ County where said child is to remain until the conclusion of a disposition hearing or until further order of this court or another juvenile court, but in no event shall this order be effective for more than ten (10) days.

14.030

SIGNED AND ENTERED, on this the _____ day of _____, A.D. 19___.

_____

Judge of the _____ Court,

_____ County, Texas,

Sitting As a Juvenile Court in Said County

NOTICE OF DETENTION HEARING

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

You are hereby notified that a detention hearing under the provisions of Section 54.01 of the Texas Family Code will be held on the _____ day of _____, 19___, at _____ O'clock ___.M. in room _____ of the _____, _____, _____, Texas. The purpose of this hearing is to determine whether the child, _____ is to be released pending further proceedings in the juvenile court. The child will be released unless the Court or referee finds that said child is likely to abscond or be removed from the jurisdiction of the juvenile court; or suitable supervision, care, or protection for him is not being provided by a parent, guardian, custodian, or other person; or he has no parent, guardian, custodian, or other person able to return him to the court when required. A release may be conditioned on requirements reasonably necessary to insure the child's appearance.

The child has a right to counsel at the detention hearing and a right to appointed counsel if the child and his parents, guardian or custodian are indigent. The child also has a right to remain silent with respect to any allegations of delinquent conduct or conduct indicating a need for supervision.

The notice as set out above was given to the child, _____ by delivering a copy of this notice to him on the _____ day of _____ 19___, at _____ o'clock ___.M.

_____

The notice as set out above was given to the parents, guardian or custodian of the child by:

_____ delivering a copy of this notice to _____, the _____ of the child at _____, Texas, on the _____ day of _____, 19___, at _____ o'clock ___.M.

_____ Reading a copy of this notice to _____, the _____ of the child on the telephone on the _____ day of _____, 19___, at _____ o'clock ___.M.

_____

After dilligent effort I have been unable to locate the parents guardian, or custodian of the child.

_____

ORDER OF RELEASE

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

On this the _____ day of _____, 19___, this court held a detention hearing in accordance with Section 54.01 of the Texas Family Code. (The child; _____, his attorney; and _____, his parents/guardian/custodian were present) or (The Court having been unable to locate the parents, guardian or custodian of the child appointed _____ as the guardian ad litem of the child and said guardian ad litem was present with the child and the attorney for the child, _____.) Proper notice and warnings as provided by Section 54.01 of the Texas Family Code were given. The Court, having considered the pleadings, the evidence and arguments of counsel for all parties finds that said child should be released from detention.

IT IS THEREFORE THE ORDER OF THIS Court that _____ be and he is hereby released to the custody of _____ to appear at the adjudication hearing which has previously been set by the juvenile court unless otherwise ordered by this Court.

SIGNED AND ENTERED on this the _____ day of _____, A.D. 19___.

_____

(Substitute) Judge of the

Juvenile Court of _____

County

ORDER OF RELEASE WITH CONDITIONS

NO. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

On this the _____ day of _____, 19___, this court held a detention hearing in accordance with Section 54.01 of the Texas Family Code. (The child; _____, his attorney; and _____, his parents/guardian/custodian were present) or (The Court having been unable to locate the parents, guardian or custodian of the child appointed _____ as the guardian ad litem of the child and said guardian ad litem was present with the child and the attorney for the child, _____.) Proper notice and warnings as provided by Section 54.01 of the Texas Family Code were given. The Court, having considered the pleadings, the evidence and arguments of counsel for all parties finds that said child should be released from detention.

The Court further finds that the release of the said child should be conditioned on requirements reasonably necessary to insure the child's appearance at later proceedings.

IT IS THEREFORE THE ORDER of this Court that _____ be and he is hereby released to the custody of _____ upon the condition that the child:

(1) not violate any law of this State, any other State or the United States.

(2) report at least once per week on _____ of each week to the Juvenile Probation Office of _____ County, Texas.

(3) not leave _____ County, Texas, without the written consent of this Court, and

(4) continue to attend school and be regular in attendance.

The Clerk of this Court will furnish the child a copy of this order taking his receipt therefor.

SIGNED AND ENTERED on this the _____ day of _____, A.D. 19___.

_____

(Substitute) Judge of the

Juvenile Court of _____

County

ORDER OF DETENTION

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

On this the _____day of _____, 19___, this court held a detention hearing in accordance with Section 54.01 of the Texas Family Code. (The child; _____ _____, his attorney; and _____, his parents/guardian/custodian were present) or (The Court having been unable to locate the parents, guardian or custodian of the child appointed _____ as the guardian ad litem of the child and said guardian ad litem was present with the child and the attorney for the child, _____.) Proper notice and warnings as provided by Section 54.01 of the Texas Family Code were given. The Court, having considered the pleadings, the evidence and arguments of counsel for all parties finds that said child should remain in custody by reason of the following:

_____ He is likely to abscond or be removed from the jurisdiction of the Court,

_____ Suitable supervision, care, or protection for him is not being provided by a parent, guardian, custodian or other person,

_____ He has no parent, guardian, custodian, or other person able to return him to the Court when requested.

IT IS THEREFORE THE ORDER of this Court that the child, _____, be and he is hereby placed in the custody of the juvenile court at the detention facility previously approved by the Juvenile Board of _____ County where said child is to remain until the conclusion of a disposition hearing or until further order of this court or another juvenile court, but in no event shall this order be effective for more than ten (10) days.

SIGNED AND ENTERED on this the _____ day of _____ _____, A.D. 19___.

_____

(Substitute) Judge of the

Juvenile Court of _____

County

ORDER OF RELEASE (BY REFEREE)

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE MATTER OF _____.

On this the _____ day of _____, 19___, this referee held a detention hearing in accordance with Section 54.01 of the Texas Family Code. (The child; _____, his attorney; and _____, his parents/guardian/custodian were present) or (The Court having been unable to locate the parents guardian or custodian of the child appointed _____ as the guardian ad litem of the child and said guardian ad litem was present with the child and the attorney for the child, _____.) Proper notice and warnings as provided by Section 54.01 of the Texas Family Code were given. Having considered the pleadings, the evidence and arguments of counsel for all parties I hereby find that none of the reasons for denying release from detention as set out in Section 54.01 (e) of the Texas Family Code have been proved.

This finding shall be transmitted to the juvenile court judge.

THEREFORE, this referee recommends to the juvenile court that the child be released to the custody of _____ to appear at the adjudication hearing to be held by the juvenile court, unless otherwise ordered by a juvenile court.

This recommendation further operates to secure the immediate release of the child subject to the power of the juvenile court judge to reject or modify the recommendation.

_____
Referee

ORDER OF APPROVAL

On this the _____ day of _____, 19___, the above order of release was recommended to this court by a referee properly appointed under the provisions of Section 54.01 of the Texas Family Code and this court is of the

opinion that the said order should be approved.

IT IS THEREFORE THE ORDER of this court that _____ _____ be and he is hereby released to the custody of _____ to appear at the adjudication hearing to be held by the juvenile court.

SIGNED AND ENTERED on this the _____ day of _____ _____, A.D. 19___.

_____

(Substitute) Judge of the

Juvenile Court of _____

County

ORDER OF RELEASE WITH CONDITIONS (BY REFEREE)

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE MATTER OF _____.

On this the _____ day of _____, 19___, this referee held a detention hearing in accordance with Section 54.01 of the Texas Family Code. (The child; _____ _____, his attorney; and _____, his parents/guardian/custodian were present) or (The Court having been unable to locate the parents guardian or custodian of the child appointed _____ as the guardian ad litem of the child and said guardian ad litem was present with the child and the attorney for the child, _____ _____.) Proper notice and warnings as provided by Section 54.01 of the Texas Family Code were given. Having considered the pleadings, the evidence and arguments of counsel for all parties I hereby find that none of the reasons for denying release from detention as set out in Section 54.01 (e) of the Texas Family Code have been proved.

I further find that the release of the said child should be conditioned on requirements reasonably necessary to insure the child's appearance at later proceedings.

THEREFORE, this referee recommends to the juvenile court that the child be released to the custody of _____ _____ to appear at the adjudication hearing to be held by the juvenile court under the following conditions which are deemed reasonably necessary to insure the child's appearance at later proceedings: That the child,

(1) not violate any law of this State, any other State or the United States,

(2) report at least once per week on _____ of each week to the Juvenile Probation Office of _____ County, Texas,

(3) not leave _____ County, Texas, without the written consent of this Court, and

(4) continue to attend school and be regular in attendance.

A written copy of these findings, recommendations and conditions shall be furnished to the juvenile court judge and the child.

This recommendation further operates to secure the immediate release of the child subject to the power of the juvenile court judge to reject or modify the recommendation.

_____
Referee

ORDER OF APPROVAL

On this the _____ day of _____, 19___, the above order of release with conditions was recommended to this court by a referee properly appointed under the provisions of Section 54.01 of the Texas Family Code and this court is of the opinion that said order should be approved.

IT IS THEREFORE THE ORDER of this court that _____ _____ be and he is hereby released subject to the conditions imposed by the referee to the custody of _____ _____ to appear at the adjudication hearing to be held by the juvenile court.

SIGNED AND ENTERED on this the _____ day of _____ _____, A.D. 19___.

_____
(Substitute) Judge of the

Juvenile Court of _____

County

ORDER OF DETENTION (BY REFEREE)

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE MATTER OF _____

On this the _____ day of _____, 19___, this referee held a detention hearing in accordance with Section 54.01 of the Texas Family Code. (The child; _____ _____, his attorney; and _____ his parents/ guardian/custodian were present) or (The Court having been unable to locate the parents, guardian or custodian of the child appointed _____ as the guardian ad litem of the child and said guardian ad litem was present with the child and the attorney for the child, _____ _____.) Proper notice and warnings as provided by Section 54.01 of the Texas Family Code were given. Having considered the pleadings, the evidence and arguments of counsel for all parties I hereby find that the child should remain in custody by reason of the following:

_____ He is likely to abscond or be removed from the jurisdiction of the court;

_____ Suitable supervision, care, or protection for him is not being provided by a parent, guardian, custodian or other person;

_____ He has no parent, guardian, custodian or other person able to return him to the court when requested.

This referee recommends to the juvenile court judge that the child, _____, be placed in the custody of the juvenile court at the detention facility previously approved by the Juvenile Board of _____ County, Texas, to remain there until the conclusion of a disposition hearing or until further order of a juvenile court, but in no event shall he remain there more than ten (10) days without further proceedings under Section 54.01 of the Texas Family Code.

_____
Referee

ORDER OF APPROVAL

On this the _____ day of _____, 19___, the above Order of Detention was recommended to this court by a referee properly appointed under the provisions of Section 54.01 of the Texas Family Code and this court is of the opinion that said order should be approved.

IT IS THEREFORE THE ORDER of this court that _____ _____ be and he is hereby placed in the custody of the juvenile court at the detention facility previously approved by the Juvenile Board of _____ County where said child is to remain until the conclusion of a disposition hearing or until further order of this court or another juvenile court, but in no event shall this order be effective for more than ten (10) days.

SIGNED AND ENTERED on this the _____ day of _____ _____, A.D. 19___.

_____

(Substitute) Judge of the

Juvenile Court of _____

County

14.044

REQUEST FOR SHELTER

NO. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE MATTER OF _____.

On this the _____ day of _____, 19___, I, _____ Probation Officer of _____ County, Texas, make this request for shelter in detention facilities for _____ who is a child within the meaning of Title 3 of the Texas Family Code pending arrangement of transportation to his residence in another state, country, or county, to-wit _____.

The child is being detained by me. He has left his place of residence in another (State) (County) or (Country) and is in need of shelter. An effort is being made to arrange transportation for the child to his place of residence.

The child has been advised by me that he has the right to demand a detention hearing.

_____
Probation Officer

I, _____, a child within the meaning of Title 3 of the Texas Family Code hereby voluntarily agree to submit myself to custody and detention for a period of not longer than ten (10) days without a detention hearing pending arrangements of transportation to my place of residence, to-wit: _____. I do so after having been advised of my right to demand a detention hearing and of my right to revoke this request at any time.

_____
Child

APPROVAL OF THE COURT

On this the _____ day of _____, 19___, the above Request for Shelter was presented to me and hereby is signed by me to evidence my knowledge of the fact that the

child is being held in detention and to evidence my approval of the same.

_____

Judge of the _____ Court,

_____ County, Texas

Sitting As a Juvenile Court in

Said County

14.046

WAIVER OF TEN DAYS

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

NOW COME the above named child and the attorney representing said child, and hereby waive the ten (10) days entitled us to prepare for trial in this case under Section 51.10(h) of the Texas Family Code.

_____
Child

_____
Attorney for Child

STIPULATION OF EVIDENCE

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT,
OF _____ COUNTY,
SITTING AS A JUVENILE COURT

IN THE MATTER OF _____.

COMES NOW _____, Respondent in the above entitled and numbered cause, and _____, his attorney, in writing and in open Court, and both having been informed of and understanding the child's rights to present witnesses on his behalf and to confront and cross-examine adverse witnesses and the possible consequences of waiving such rights, both voluntarily consent to the stipulation of the evidence in this case and in so doing expressly waive the appearance, confrontation and cross-examination of witnesses. We further consent to the introduction of testimony by affidavits, written statements of witnesses and other documentary evidence.

Having been informed of and understanding the child's Federal and State constitutional rights to remain silent and against self-incrimination and the possible consequences of waiving such rights and after having been sworn, upon oath, the child and his attorney judicially confess to the following facts and agree and stipulate that the facts are true and correct and constitute the evidence in this case:

_____
Child

_____
Attorney for the Child

Sworn and subscribed to before me the undersigned authority on this the _____ day of _____, A.D. 19___.

_____
Clerk, Juvenile Court of
_____ County, Texas

Approved by the Court:

_____
Judge of the _____ Court,
_____ County, Texas,
Sitting As a Juvenile Court of
Said County

14.048

WAIVER OF TRIAL BY JURY

No. _____

STATE OF TEXAS
COUNTY OF _____

IN THE _____ COURT,
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

COMES NOW _____ the Respondent in the above entitled and numbered cause, and his attorney, _____, in writing and in open Court, both having been informed of and understanding the child's right to a trial by jury and the possible consequences of waiving such right, both now waive the right of trial by jury.

_____
Child

_____
Attorney for the Child

Sworn and subscribed to before me the undersigned authority on this the _____ day of _____, A.D. 19___.

_____
Clerk, Juvenile Court of
_____ County, Texas

Approved by the Court:

_____
Judge of the _____ Court,
_____ County, Texas,
Sitting As a Juvenile Court of
Said County

ORDER FOR DIAGNOSTIC STUDY

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

It appearing to the Court that child in the above styled and numbered cause is charged with the violation of a penal law of the grade of felony and was fifteen (15) years of age or older at the time of the commission of the alledged offense and it further appearing to the Court that because of the seriousness of the offense and the background of the offender the welfare of the community may require criminal proceedings.

IT IS THEREFORE ORDERED THAT _____
_____
within a reasonable time after receipt of this order, make a complete diagnostic study, social evaluation, and full investigation of the child, his circumstances, and the circumstances of the alleged offense and that said report by filed in the papers of this case.

ENTERED this _____ day of _____ A.D., 19___.

_____

Judge of the _____ Court,

_____ County, Texas,

Sitting As a Juvenile Court in

Said County

14.050

PETITION REQUESTING THE JUVENILE COURT

TO WAIVE ITS JURISDICTION

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

COMES NOW the State by its _____ Attorney, _____ County, and requests that this court waive its jurisdiction and transfer this case to the appropriate criminal court in _____ County, Texas, in accordance with Section 54.02 of the Texas Family Code, and would show the court:

1. That the child is _____ years of age, having been born on the _____ day of _____, 19 ___;

2. That the offense alleged is against the person and was committed in an aggressive and premeditated manner;

3. That there is evidence upon which the grand jury may be expected to return an indictment;

4. That the child is sophisticated and mature enough that he should be treated as an adult;

5. That the record and previous history of the child warrant his being treated as an adult;

6. That the prospects of adequate protection of the public and the likelihood of reasonable rehabilitation of the child by the use of procedures, services, and facilities currently available to the _____ court warrant his being treated as an adult;

7. That counsel for the child has been given access to all the records relating to the child in the possession of the Court, its staff and employees.

WHEREFORE, PREMISES CONSIDERED, petitioner moves that this Court set and conduct a hearing on the issue of waiver of jurisdiction in accordance with the provisions of Section 54.02 of the Texas Family Code and that after said hearing this Court waive jurisdiction and transfer the child to an appropriate court of _____ County, Texas, for Criminal proceedings.

RESPECTFULLY SUBMITTED:

_____

_____ Attorney

_____ County, Texas

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "Motion Requesting the Juvenile Court to Waive its Jurisdiction" has been forwarded by United States Mail as first class matter, postage prepaid, to _____, _____, Texas, the attorney for the child, and _____, _____, Texas, guardian ad litem for the child, on this ____ day of _____, 19___.

_____
Prosecuting Attorney

14.052

REPORT OF INVESTIGATION (FOR WAIVER OF JURISDICTION)

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

In accordance with the order entered by this Court in the above styled and numbered cause on the _____ day of _____ _____ A.D., 19___, the following report is submitted by _____.

1. Diagnostic Study

The child was examined by Dr. _____ a psychiatrist and/or psychologist in _____, Texas. Dr. _____ report is attached hereto and made a part hereof and marked exhibit #1.

2. Social Evaluation and Investigation of the Child and his Circumstances

FAMILY DATA:

Father -

Birthdate:
Birthplace:
Occupation:
Income:
Education:

Mother -

Maiden name:
Birthdate:
Birthplace
Occupation:
Income:
Education:

SIBLINGS:

Sisters:

Brothers:

GIVE A COMPLETE REPORT OF CHILD AND HIS BACKGROUND.

3. Circumstances of the Alleged Offense

(Describe in great detail the alleged offense. Be sure your facts are as close to correct as possible.) Do not rely soley on offense reports.

_____

OF _____ COUNTY, TEXAS

ORDER RETAINING JURISDICTION

No. _____

STATE OF TEXAS
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

On this the _____ day of _____ A.D. 19___, a hearing was held in the above styled and numbered cause under Section 54.02 of the Texas Family Code on the issue of waiver of jurisdiction. Prior thereto the Court had ordered and obtained a diagnostic study, social evaluation, a full investigation of the child, his circumstances, and the circumstances of the alleged offense; counsel, _____ was retained/appointed more than ten (10) days prior to the hearing; (_____ was appointed guardian ad litem more than 10 days prior to the hearing;) both counsel for the child (and his guardian ad litem) were given access to all written matter to be considered by the Court in making the transfer decision more than one day prior to the hearing; and both parents have been served with citation two days prior to the hearing. After full investigation and hearing at which hearing the child, his counsel, his guardian ad litem and his parents were present, the Court finds that after considering the seriousness of the offense and the background of the offender, the welfare of the community does not require criminal proceedings.

IT IS THEREFORE ORDERED THAT the jurisdiction of this case remains in the Juvenile Court, the said _____ be and the same is hereby (released from custody pending an adjudication hearing in the Juvenile Court) (detained in custody of the Juvenile Court as determined by and according to the orders of the previous Detention Hearing).

_____

Judge of the _____ Court,

_____ County, Texas,

Sitting As a Juvenile Court in

Said County

ORDER WAIVING JURISDICTION

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

On this the _____ day of _____ A.D., 19___, a hearing was held in the above styled and numbered cause under Section 52.04 of the Texas Family Code on the issue of waiver of jurisdiction. Prior thereto the Court had ordered and obtained a diagnostic study, social evaluation, a full investigation of the child, his circumstances, and the circumstances of the alleged offense; counsel, _____ was retained/appointed more than ten (10) days prior to the hearing; (_____ was appointed guardian ad litem more than 10 days prior to the hearing;) both the counsel for the child and his guardian ad litem were given access to all written matter to be considered by the court in making the transfer decision more than one day prior to the hearing; and both parents had been served with citation prior to the hearing. After full investigation and hearing at which hearing the child, his counsel, his guardian ad litem and his parents were present, the Court finds that the said _____ is charged with the violation of a penal law of the grade of felony, if committed by an adult to-wit: _____; that he was _____ years of age at the time of the commission of the alleged offense, having been born on the _____ day of _____, 19___, and that because of the seriousness of the offense, the welfare of the community requires criminal proceedings.

In making that determination the Court has considered, among other matters:

1. whether the alleged offense was against person or property, with the greater weight in favor given to offense against the person;

2. whether the offense was committed in an aggressive and premeditated manner;

3. whether there is enough evidence upon which the grand jury may be expected to return an indictment;

4. the sophistication and maturity of the child;

5. the record and previous history of the child; and

6. the prospects of adequate protection of the public and the likelihood of reasonable rehabilitation of the child by use of procedures, services, and facilities currently available to the Juvenile Court.

The Court specifically finds that the said _____ _____ is of sufficient sophistication and maturity to have intelligently, knowingly and voluntarily waived all constitutional and statutory rights heretofore waived by the said _____, and to have aided in the preparation of his defense; that the offense alleged to have been committed by the said _____, to-wit: _____, was against the person of another and was committed in an aggressive and premeditated manner; that evidence was presented concerning the alleged offense upon which a grand jury may be expected to return an indictment; that the record and previous history of the said _____ reveal that _____; that the evidence and reports heretofore presented to the Court demonstrate to the Court that there is little, if any prospect of adequate protection of the public and likelihood of reasonable rehabilitation of the said _____ by use of procedures, services and facilities currently available to the Juvenile Court. (CHANGE THE FINDINGS IN THIS PARAGRAPH TO FIT THE PARTICULAR CHILD)

(RECITE THE REASONS THE COURT IS WAIVING JURISDICTION, INCLUDING A RECITATION OF THE OFFENSE)

IT IS THEREFORE ORDERED THAT the jurisdiction of this Court, be and it is hereby waived and the said _____ be and the same is hereby transferred to the _____ Court of _____ County, Texas, for criminal proceedings in accordance with the Code of Criminal Procedure.

_____

Judge of the _____ Court,

_____ County, Texas,

Sitting As a Juvenile Court in

Said County

On entry of the above and foregoing order, the Court instructed the attorney for the child to advise the child and his parent, guardian, or guardian ad litem of the child's right to appeal, of the child's right to representation by counsel on appeal, and of the child's right to appointment of an attorney for appeal if an attorney cannot be obtained because of indigency. The attorney was instructed that if the child, and his parent, guardian, or guardian ad litem express a desire to appeal, the attorney shall file a notice of appeal with this Court and inform this Court whether or not he will handle the appeal.

_____

Juvenile Court Judge

JUDGMENT AND ORDER FOR RELEASE

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

In the above entitled cause, it appearing to the Court that said child _____ has not engaged in delinquent conduct/conduct indicating a need for supervision as alleged in the petition.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the case be dismissed with prejudice and that the said child _____ be released from custody, and that he/she go hence without delay.

Entered in open Court, this _____ day of _____ _____ A.D., 19___.

_____

Judge of the _____ Court,

_____ County, Texas,

Sitting As a Juvenile Court in

Said County

JUDGMENT

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

ON THIS the _____ day of _____, A.D. 19___, in this Court sitting as a Juvenile Court, there was called a hearing for consideration of the matters in the above styled and numbered cause, wherein by proper petition the said _____ is alleged to have engaged in delinquent conduct/conduct indicating a need for supervision.

And after due notice had been served on all parties for the time required by law, came and appeared the petitioner by its (County) (District) Attorney and announced ready for such hearing. And thereupon also came the child, who appeared in person, with his/her attorney, _____ _____ (appointed) also being present, and with his/her father, _____, and his/her mother, _____, and his/her guardian ad litem, _____ _____, also being present; and the child and his/her attorney having waived the ten (10) days for preparation for such hearing, and the right to a trial by jury, in writing; and all parties announced ready for such hearing; and thereupon the Court after hearing the pleadings of all the parties and after hearing the evidence and argument of counsel, finds beyond a reasonable doubt that the following allegations in the petition filed herein are true and supported by the evidence: (when applicable, "that the child violated a reasonable and lawful order of a court entered upon a finding that the child engaged in conduct indicating a need for supervision, to wit: _____ _____.

The Court also finds that said child was born on the _____ day of _____, A.D. 19___.

IT IS THEREFORE CONSIDERED AND ADJUDGED BY THE COURT THAT _____ has engaged in delinquent conduct/conduct indicating a need for supervision within the meaning of Section 51.03, Texas Family Code.

14.060

Dispositional hearing for this case is set for _____ _____, 19___, at _____ o'clock ___.M. in room _____ of _____.

SIGNED AND ENTERED on this _____ day of _____, A.D. 19___.

_____

Judge of the _____ Court,

_____ County, Texas,

Sitting As a Juvenile Court in

Said County

On entry of the above and foregoing order, the Court instructed the attorney for the child to advise the child and his parent, guardian, or guardian ad litem of the child's right to appeal, of the child's right to representation by counsel on appeal, and of the child's right to appointment of an attorney for appeal if an attorney cannot be obtained because of indigency. The attorney was instructed that if the child, and his parent, guardian, or guardian ad litem express a desire to appeal, the attorney shall file a notice of appeal with this Court and inform this Court whether or not he will handle the appeal.

_____

Juvenile Court Judge

JUDGMENT IN A JURY CASE

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

On this the _____ day of _____ A.D. 19___, in this Court, there was called a hearing for consideration of the matters in the above styled and numbered cause wherein by proper petition, the said _____ is alleged to have engaged in delinquent conduct/conduct indicating a need for supervision.

And after due notice had been served on all parties for the time required by law and said child had filed an answer denying the allegations of said petition came and appeared the petitioner by its (County) (District) Attorney and announced ready for such hearing. And thereupon also came the child, who appeared in person, with his/her attorney, _____(appointed) and with his/her father, _____, and his/her mother, _____, and his/her guardian ad litem, _____, also being present and announced ready for such hearing, and a jury, to wit: _____ and eleven others were duly selected, impaneled and sworn, who having heard the petition read and the child's answer thereto and having the evidence submitted and having been duly charged by the Court, retired to consider their verdict and afterward returned into Court in due form of law the following answers to the special issues which were received by the Court and now entered upon the minutes of the Court:

[Enter here the special issues showing the allegations of the petition which were found to be established by the evidence.]

"Do you find from the evidence beyond a reasonable doubt that _____ has engaged in delinquent conduct/conduct indicating a need for supervision as that term has been hereinabove defined?

Answer 'yes' or 'no'.

We, the Jury, answer: _____.

_____
Foreman"

and it is considered by the Court that _____ is adjudged to have engaged in delinquent conduct/conduct indicating a need for supervision within the meaning of Title 3 of the Texas Family Code and that the said delinquent child was born on the _____ day of _____ 19____.

IT IS THEREFORE CONSIDERED AND ADJUDGED BY THE COURT THAT _____ has engaged in delinquent conduct/ conduct indicating a need for supervision within the meaning of Section 51.03, Texas Family Code.

Dispositional hearing for this case is set for _____ _____, 19___ at _____ o'clock ___.M. in room _____ of _____.

SIGNED AND ENTERED on this _____ day of _____, A.D. 19___.

_____

Judge of the _____ Court,

_____ County, Texas,

Sitting As a Juvenile Court in

Said County

On entry of the above and foregoing order, the Court instructed the attorney for the child to advise the child and his parent, guardian, or guardian ad litem of the child's right to appeal, of the child's right to representation by counsel on appeal, and of the child's right to appointment of an attorney for appeal if an attorney cannot be obtained because of indigency. The attorney was instructed that if the child, and his parent, guardian, or guardian ad litem express a desire to appeal, the attorney shall file a notice of appeal with this Court and inform this Court whether or not he will handle the appeal.

_____

Juvenile Court Judge

SOCIAL HISTORY

Probation Officer_____ Date of Interview_____

I. Subject

A. Full name_____ Sex_____

B. Birthdate_____ Verified____ City_____ State_____

C. Address of Residence_____

D. Siblings

	Name	Birthdate	School & Grades	Residence
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				

E. Health

1. Has the subject received any injuries, especially to the head (if so, explain and give year)

_____

2. Does subject have headaches or dizzy spells? _____(if so, explain and state frequency)

_____

3. Is subject excessively nervous? _____

4. Does subject wet bed? (If so, how often)_____

5. Is subject on any regular medication? (If so, explain) _____

_____

6. Does subject have history of infection and/or illnesses? _____

_____

7. Has subject ever been under the care of a psychiatrist? (If so, explain) _____

F. School

1. Present school _____ Year attended _____ Grade _____

2. Is subject out of school _____ Reason _____

_____

3. Has subject repeated any grades in school? _____

Reason _____

4. Is subject a discipline problem at school _____ Home _____

Type of problem _____

_____

5. School report _____ Psychological report _____ Psychiatric ___

G. Employment

1. Subject works _____ Full time _____ Part time _____

2. Where _____ Kind of work _____

3. Hours _____ Salary _____

H. Religion

1. Church _____ Attendance _____

1. List hobbies & extra curricular activities

_____

_____

_____

J. List subject's associates

1. Name_____ Age_____

2. Name_____ Age_____

3. Name_____ Age_____

K. Contacts with authority

	Date	Offense	Referred by	Disposition
1.				
2.				
3.				
4.				
5.				

SECTION II - Information on Spouse (Indicate if legal or common law Marriage) (Leave blank if not married)

1. Spouse's name _____ (last) (first) (middle) (maiden)
2. Spouse's birthdate _____ Place _____
3. If spouse is deceased, give date and cause _____
4. Are spouse's parents living _____ Name & Address _____
5. How many brothers and sisters? _____
6. Date of first marriage _____ To whom _____ Where _____
7. Date of divorce _____ Where _____ Verified _____
8. Date of second marriage _____ To whom _____ Where _____
9. Date of divorce _____ Where _____ Verified _____
10. Date of third marriage _____ To whom _____ Where _____
11. Date of divorce _____ Where _____ Verified _____
12. Total number of marriages _____
13. Number of children from first marriage _____
14. Number of children from second marriage _____
15. Number of children from third marriage _____
16. Education status (last grade completed) _____
17. Religious denomination or preference _____
18. Church attendance (circle one) Regularly Occasionally None
19. Employment (type of work) _____ Where _____
    When employed _____ Net income _____
20. Present health of spouse (explain) _____
    Has wife ever received psychiatric treatment? _____

21. If alcoholic beverages used, how much?_____

22. Has spouse been arrested?_____For what reason_____

How many times?_____Date of last arrest_____

Where_____

23. What is spouse's attitude toward subject generally?_____

_____

_____

24. What is spouse's attitude toward the referral to Court?

_____

_____

SECTION III - Information on Father (indicate if step-father or other relative)

1. _____Father's name_____
2. Father's birthdate_____Place_____
3. If father deceased, give date and cause_____
4. Are father's parents living_____Name & address_____

   _____
5. How many brothers and sisters_____
6. Date of first marriage_____To whom_____Where_____

   _____
7. Date of divorce_____Where_____Verified_____
8. Number of children born_____
9. Date of second marriage_____To whom_____Where_____
10. Date of divorce_____Where_____Verified_____
11. Number of children born_____
12. Educational status (last grade completed)_____
13. Religious denomination or preference_____
14. Church attendance (circle one) Regularly Occasionally None
15. Employment (Type of work)_____Where_____

    When employed_____Net income_____
16. Present health of father (explain)_____

    Has father ever received psychiatric treatment?_____
17. If alcoholic beverages used, how much?_____
18. Has father been arrested?_____For what reason_____

    How many times?_____Date of last arrest_____Where?_____
19. Has the father had military service? If so, what branch_____

    Give dates_____

20. Is the father supposed to pay child support?_____If so, how much?_____Where are payments made?_____Are payments up to date?_____

21. Father's present place of residence (if known)_____

22. What is father's attitude toward child's referral to Juvenile Court?_____

_____

SECTION III - Information on Mother (Indicate if step-mother or relative)

1. Mother's name _____ (last) (first) (middle) (maiden)
2. Mother's birthdate _____ Place _____
3. If mother deceased, give date and cause _____
4. Are mother's parents living _____ Name & address _____
5. How many brothers and sisters? _____
6. Date of first marriage _____ To whom _____ Where _____
7. Date of divorce _____ Where _____ Verified _____
8. Date of second marriage _____ To whom _____ Where _____
9. Date of divorce _____ Where _____ Verified _____
10. Date of third marriage _____ To whom _____ Where _____
11. Date of divorce _____ Where _____ Verified _____
12. Total number of marriages _____
13. Number of children from first marriage _____
14. Number of children from second marriage _____
15. Number of children from third marriage _____
16. Education status (last grade completed) _____
17. Religious denomination or preference _____
18. Church attendance (circle one) Regularly Occasionally None
19. Employment (type of work) _____ Where _____
    When employed _____ Net income _____
20. Present health of mother (explain) _____

    Has mother ever received psychiatric treatment?

21. If alcoholic beverages used, how much?_____

22. Has mother been arrested?_____For what reason_____

How many times?_____Date of last arrest_____

Where_____

23. What is mother's attitude toward child generally?_____

_____

_____

_____

24. What is mother's attitude toward the referral to Juvenile Court?

_____

_____

SECTION IV - Home Environment

1. Address_____

   How long has family lived at present address?_____

2. Type of present residence (circle one) Apartment House Duplex

3. How many rooms?_____

4. General appearance of residence_____

_____

5. Other persons residing in household.

Name	Age	Relationship to Child

6. Rent (amount)_____ Buying (monthly payments)_____

7. Value of home if buying_____

8. Support of family is by (list wage earners & monthly take home pay)

_____

_____

9. Is there other income besides wages? If so, how much_____

Pensions_____Social Security_____Other_____

10. Has family a lot of debts_____

ORDER OF DISMISSAL WITHOUT DISPOSITION

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT,
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

ON THIS the _____ day of _____, 19___, came on to be heard for disposition the above numbered and entitled cause. The above-named child was adjudged to have engaged in delinquent conduct/ conduct indicating a need for supervision in a hearing held by this court on _____ _____, 19___.

And after due notice had been served on all parties as required by law, came and appeared the petitioner by its (County) (District) Attorney and announced ready for such hearing. And thereupon also came the child, who appeared in person, with his/her attorney, _____ (appointed) also being present, and with his/her father, _____, and his/her mother, _____ _____, and his/her guardian ad litem, _____ _____, also being present; and all parties announced ready for such hearing; and thereupon the Court after hearing the pleadings of all the parties and after hearing the evidence and argument of counsel, finds neither that the child is in need of rehabilitation nor that the protection of the public or the child requires that disposition be made.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the case be dismissed and that the said child ___ _____ be released from custody, and that final judgment without disposition be entered.

Entered in open Court, this _____ day of _____, A.D. 19___.

_____
Judge of the _____ Court,
_____ County, Texas,
Sitting As a Juvenile Court in
Said County

ORDER OF PROBATION

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT,
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

ON THIS the _____ day of _____, 19___, came on to be heard for disposition the above numbered and entitled cause. The above-named child was adjudged to have engaged in delinquent conduct/conduct indicating a need for supervision in a hearing held by this court on _____ _____, 19___.

And after due notice had been served on all parties as required by law, came and appeared the petitioner by its (County) (District) Attorney and announced ready for such hearing. And thereupon also came the child, who appeared in person, with his/her attorney, _____ (appointed) also being present, and with his/her father, _____, and his/her mother, _____ _____, and his/her guardian ad litem, _____, also being present; and all parties announced ready for such hearing; and thereupon the Court after hearing the pleadings of all the parties and after hearing the evidence and argument of counsel, finds that the child is in need of rehabilitation (and) that the protection of (the public) (the child) requires that disposition be made.

And it further appearing to the Court that the best interest of the child and the best interest of society will be served by granting him probation, for the following reasons: (include a recitation of the offense)

IT IS THEREFORE CONSIDERED, ORDERED, AND ADJUDGED BY THE COURT that _____ now comes under the jurisdiction of said Court and shall continue under its care, guidance, and control for one year, subject to extensions not to exceed one year each until he becomes eighteen (18) years of age unless discharged prior thereto subject to subsequent and additional proceedings under the provisions made by the statute in such cases, and that the said

_____ be and is hereby placed on probation in accordance with Title 3, Texas Family Code, and upon the following reasonable and lawful terms and conditions:

That the said delinquent:

(a) commit no offense against the laws of the State of Texas or of any other state or of the United States;

(b) avoid injurious or vicious habits:

(c) avoid persons or places of disreputable or harmful character;

(d) report to the probation officer as directed: the juvenile is paroled to _____, Juvenile Probation Officer, or his successors in office; the juvenile shall report this day in person and thereafter [at least once per month];

(e) permit the probation officer to visit the child at the child's home or elsewhere;

(f) remain within _____ County, Texas, unless this court consents in writing to the change of residence;

(g) follow the following curfew regulations: on week nights the child is to be at home before _____ o'clock; on Friday and Saturday nights the said child is to be at home at _____ o'clock p.m.; and the following exceptions will be permitted:

_____

_____;

(h) continue to attend school and to be regular in attendance and obey school rules and regulations;

(i) not associate with the following people: _____

_____

_____;

(j) not visit or loiter around the following places:

_____

_____;

(k) _____

_____

The Clerk of this Court will furnish the child a copy of this order taking his receipt therefor, as a written statement of the child's probation.

SIGNED AND ENTERED on this the _____ day of _____ _____, A.D. 19___.

_____

Judge of the _____ Court,

_____ County, Texas,

Sitting As a Juvenile Court in

Said County

On entry of the above and foregoing order, the Court instructed the attorney for the child to advise the child and his parent, guardian, or guardian ad litem of the child's right to appeal, of the child's right to representation by counsel on appeal, and of the child's right to appointment of an attorney for appeal if an attorney cannot be obtained because of indigency. The attorney was instructed that if the child, and his parent, guardian, or guardian ad litem express a desire to appeal, the attorney shall file a notice of appeal with this Court and inform this Court whether or not he will handle the appeal.

_____

Juvenile Court Judge

ORDER OF COMMITMENT

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

ON THIS the _____ day of _____, 19___, came on to be heard for disposition the above numbered and entitled cause. The above-named child was adjudged to have engaged in delinquent conduct in a hearing held by this court on _____ _____ _____, 19___.

And after due notice had been served on all parties as required by law, came and appeared the petitioner by its (County) (District) Attorney and announced ready for such hearing. And thereupon also came the child, who appeared in person, with his/her attorney, _____ (appointed) also being present, and with his/her father, _____, and his/her mother, _____ _____, and his/her guardian ad litem, _____, also being present; and all parties announced ready for such hearing; and thereupon the Court after hearing the pleadings of all the parties and after hearing the evidence and argument of counsel, finds that the child is in need of rehabilitation (and) that the protection of (the public) (the child) reguires that disposition be made. The court also finds that said child at the time of this hearing was _____ years of age, having been born on the _____ day of _____, A.D. 19___ (,a certified copy of the birth certificate of said child being attached hereto and made a part hereof).

It further appears to the Court that the best interest of the child and the best interest of society will be served by committing him/her to the care, custody and control of the Texas Youth Council, for the following reasons:(Include a recitation of the offense)_____
_____
_____

IT IS THEREFORE CONSIDERED AND ADJUDGED BY THE COURT THAT the said _____ be and is hereby committed to the care, custody, and control of the Texas Youth Council in accordance with article 5143d, V.A.T.C.S. for an indeterminate period of time not to exceed the time when he/she shall be 18

years of age or until duly discharged in compliance with the provisions of article 5143d, V.A.T.C.S. The child is ordered placed in custody of the Juvenile Probation Officer pending transportation to the proper Texas Youth Council facility.

The Clerk of this Court will furnish the child a copy of this order taking his receipt therefor.

SIGNED AND ENTERED on this _____ day of _____, A.D. 19___.

_____

Judge of the _____ Court,

_____ County, Texas,

Sitting As a Juvenile Court in

Said County

On entry of the above and foregoing order, the Court instructed the attorney for the child to advise the child and his parent, guardian, or guardian ad litem of the child's right to appeal, of the child's right to representation by counsel on appeal, and of the child's right to appointment of an attorney for appeal if an attorney cannot be obtained because of indigency. The attorney was instructed that if the child, and his parent, guardian, or guardian ad litem express a desire to appeal, the attorney shall file a notice of appeal with this Court and inform this Court whether or not he will handle the appeal.

_____

Juvenile Court Judge

PETITION FOR HEARING TO MODIFY DISPOSITION

(CHANGE CUSTODY)

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT,
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

Comes now the State of Texas by and through _____, _____, Attorney of _____ County, Texas, in the above styled and numbered cause and requests that the Court change the custody of the said child from his parents, _____ _____ to _____ _____ and as reasons therefore would show the Court the following:

I.

On the _____ day of _____, A.D. 19___, the child herein, _____ was found to have engaged in delinquent conduct/conduct indicating a need for supervision within the meaning of Title 3, Texas Family Code, and placed under the jurisdiction of this Court. The said child was placed on probation and in the custody of _____ _____.

II.

Subsequent to the time he was placed on probation and placed in the custody of his parents, _____ _____, the said child did leave the custody of his parents and has not lived in their home for some time as of the time of the filing of this application.

III.

Petitioner would further show that _____ _____ are fit and suitable persons to have the care, custody and control of said child.

WHEREFORE, premises considered, Petitioner pray that this Honorable Court set a date for a hearing hereon; that upon final hearing _____ be awarded the complete care, custody and control of said minor child

subject to further orders of this court and all the terms and conditions set out in the Order of Probation entered by this Court in this cause on the _____ day of _____ _____, A.D. 19___.

Respectfully submitted,

_____

_____ Attorney

_____ County, Texas

By _____

_____ Attorney

PETITION FOR HEARING TO MODIFY DISPOSITION

(REVOKE PROBATION)

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, on this the _____ day of _____, A.D. 19___, _____, _____ Attorney of _____ County, Texas, on behalf of the State of Texas, hereinafter called the Petitioner, and would show the Court that heretofore, on the _____ day of _____, A.D. 19___, _____, hereinafter called the Probationer, was declared to have engaged in delinquent conduct in the above numbered and styled cause and was placed on probation under the reasonable and lawful terms and conditions of probation determined by the Count until the Probationer becomes eighteen (18) years of age; that the order placing the said Probationer on probation imposed certain terms and conditions on said Probationer which had to be complied with, or the said probation heretofore granted would be set aside.

That the reasonable and lawful terms and conditions of said probation, among other things, provided:

Your Petitioner would show the Court that he has good reason to believe and does believe and charges that the said Probationer herein has violated the reasonable and lawful conditions of his probation in this, to-wit:_____

_____

_____

_____; and that the said violations of the conditions of his probation as aforesaid were committed while the said probation was in full force and effect.

WHEREFORE, premises considered, it is respectfully prayed that this cause be set down for a hearing on some day and date and at a place to be fixed by the Court; that the Court issue reasonable notice to the parties named herein

and requiring the persons named herein who have the custody and control of the said child to appear personally before this Court and to bring said child before this Court, at the time and place stated and directed by the Court as the time and place for the trial of this cause and that the parents, guardian or custodian of said child be notified of the pendence of this cause and of the time and place appointed by the Court for trial hereof.

It is further prayed that this Honorable Court, by issuance of a writ for immediate custody, shall authorize an officer to at once take said child into custody.

It is further prayed that upon a final hearing hereof, the Court revoke said probation and issue an order of commitment.

Respectfully submitted,

_____

_____ Attorney

_____ County, Texas

_____

_____ Attorney

WAIVER OF HEARING TO MODIFY DISPOSITION
(only when result may not be commitment to TYC)

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

We, _____, the child in the above styled and numbered cause and _____, his attorney, hereby waive the child's right to a hearing on modification of disposition. The child's right to have a hearing on modification of disposition and the purpose of such a hearing have been explained to us and we understand these rights and the possible consequences of waiving these rights and knowingly, voluntarily and intelligently waive the right to have a hearing to modify disposition.

_____
Child

_____
Parent/Guardian/Guardian ad Litem/
Attorney for the Child

NOTICE OF HEARING TO MODIFY DISPOSITION

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

You are hereby notified that a hearing to modify disposition under the provisions of Section 54.05 of the Texas Family Code will be held on the _____ day of _____ _____, 19___, at _____ o'clock ___.M. in room _____ of the _____, _____, _____, Texas. The purpose of this hearing is to determine whether the child, _____ should be committed to the Texas Youth Council.

The child has a right to counsel at the hearing and a right to appointed counsel if the child and his parents, guardian or custodian are indigent. The child also has a right to remain silent with respect to any allegations of delinquent conduct or conduct indicating a need for supervision.

The notice as set out above was given to the child, _____ by delivering a copy of this notice to him on the _____ day of _____ 19___, at _____ o'clock ___.M.

_____

The notice as set out above was given to the parents, guardian or custodian of the child by:

_____ delivering a copy of this notice to _____ _____, the _____ of the child at _____ _____, _____, Texas, on the _____ day of _____, 19___ at _____ o'clock ___.M.

_____ sending a copy by certified mail, return receipt requested, to _____, the _____ _____ of the child at _____, _____, Texas, on the _____ day of _____, 19___.

_____ Reading a copy of this notice to _____ _____ the _____ of the child on the telephone on the _____ day of _____, 19___, at _____ o'clock ___.M.

_____

After diligent effort I have been unable to locate the parents, guardian, or custodian of the child.

_____

14.086

ORDER REVOKING PROBATION

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

ON THIS the _____ day of _____, A.D. 19___, came on to be heard the written petition of the State of Texas by and through its _____ Attorney of _____ County, Texas, for revocation of the probation heretofore granted by this Court in this cause on the _____ day of _____, A.D. 19___, wherein the said _____ was declared to have engaged in delinquent conduct. The said child was placed under the jurisdiction of this Court and under its care, guidance, and control; the said child was placed on probation; and the reasonable and lawful terms and conditions of the said probation which were determined by the Court among other things provided: _____
_____
_____
_____
_____; and the Court having heard the evidence offered by the State of Texas and having considered the same finds that within the period of said probation the child violated the terms and conditions thereof in the following particulars, to-wit: _____
_____
_____
_____
_____
_____.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the probation heretofore granted to the child in this cause be and the same is hereby revoked; that the finding of delinquent conduct heretofore made in this case be and the same hereby is made a final finding; and that said _____ _____ be and hereby is committed to the care, custody, and control of the Texas Youth Council in accordance with article 5143d, V.A.T.C.S.

SIGNED AND ENTERED on this the _____ day of _____ _____, A.D. 19___.

_____

Judge of the _____ Court,

_____ County, Texas,

Sitting As a Juvenile Court in

Said County

On entry of the above and foregoing order, the Court instructed the attorney for the child to advise the child and his parent, guardian, or guardian ad litem of the child's right to appeal, of the child's right to representation by counsel on appeal, and of the child's right to appointment of an attorney for appeal if an attorney cannot be obtained because of indigency. The attorney was instructed that if the child, and his parent, guardian, or guardian ad litem express a desire to appeal, the attorney shall file a notice of appeal with this Court and inform this Court whether or not he will handle the appeal.

_____

Juvenile Court Judge

14.088

ORDER CONTINUING PROBATION

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

In the above entitled cause, it appearing to the Court that it is to the best interets of said child _____ _____ that his/her probation not be revoked as requested in the State's Application to Revoke Probation.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by this Court that the application to revoke the probation of said child _____ is hereby denied and the Original Order of Probation stands as ordered subject to the conditions set out in the judgment heretofore entered in this cause so long as said child shall, in the opinion of the Court, comply with the conditions, or until further ordered by this Court.

Entered in open Court, this the ____ day of _____ _____, A.D. 19___.

_____

Judge of the _____ Court,

_____ County, Texas,

Sitting As a Juvenile Court in

Said County

ORDER CHANGING CUSTODY

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

On the _____ day of _____, 19___, came on to be heard the application to change custody in the above entitled and numbered cause filed under Title 3, Texas Family Code, wherein said child, _____, born _____ _____ was adjudged to have engaged in delinquent conduct/conduct indicating a need for supervision and placed on probation under the jurisdiction of this Court and placing said child in the custody of _____.

On recommendation of _____ and it further appearing to the Court that it is for the best interest of said child to change his custody and further that _____ are fit and proper persons to have care, custody and control of said minor, it is therefore proper to place said minor in their custody.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the court that _____, is placed in the custody of _____ under further orders of this Court.

Signed and entered this _____ day of _____, 19___.

_____

Judge of the _____ Court,

_____ County, Texas,

Sitting As a Juvenile Court in

Said County

On entry of the above and foregoing order, the Court instructed the attorney for the child to advise the child and his parent, guardian, or guardian ad litem of the child's right to appeal, of the child's right to representation by counsel on appeal, and of the child's right to appointment of an attorney for appeal if an attorney cannot be obtained because of indigency. The attorney was instructed that if the child, and his parent, guardian. or guardian ad litem express a desire to appeal, the attorney shall file a notice of appeal with this Court and inform this Court whether or not he will handle the appeal.

_____

Juvenile Court Judge

ORDER EXTENDING DISPOSITION

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

On this the _____ day of _____, 19___, it appearing to the Court that a Disposition Order was entered in the above styled and numbered cause on the _____ day of _____, 19___, and that said disposition order was for a period of one year subject to extensions not to exceed one year each; and it further appearing to the Court that the best interest of the child would be served by extending said disposition order for one year;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that the Disposition Order heretofore entered in this cause on the _____ day of _____, 19___, be, and the same is hereby extended for one year from the date of this order.

SIGNED AND ENTERED this _____ day of _____, 19___.

_____

Judge of the _____ Court,

_____ County, Texas,

Sitting As a Juvenile Court in

Said County

On entry of the above and foregoing order, the Court instructed the attorney for the child to advise the child and his parent, guardian, or guardian ad litem of the child's right to appeal, of the child's right to representation by counsel on appeal, and of the child's right to appointment of an attorney for appeal if an attorney cannot be obtained because of indigency. The attorney was instructed that if the child, and his parent, guardian, or guardian ad

litem express a desire to appeal, the attorney shall file a notice of appeal with this Court and inform this Court whether or not he will handle the appeal.

_____

Juvenile Court Judge

NOTICE OF RIGHT TO PETITION FOR THE SEALING OF FILES AND RECORDS

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

This is to inform you of your rights under Section 51.16 of the Texas Family Code to ask the juvenile court to seal the files and records in your case. The practical effect of this would be that no one could see these files and records unless you later request that they be allowed to. Any person or agency who has files or records pertaining to your case could not show them to anyone or even admit that such records exist. The juvenile proceedings you were involved in would be treated as if they had never occurred.

You may petition the court to seal these files and records when two years have passed after your final discharge from custody of the Texas Youth Council, probation or parole, or after the last official action in your case if there was no adjudication. If you petition the court to seal the files and records, a hearing will be held in which you must show the court that during the two years you were not convicted of a felony or a misdemeanor involving moral turpitude nor found to have engaged in delinquent conduct or conduct indicating a need for supervision; that no proceeding is pending seeking your conviction or adjudication; and that you have been rehabilitated.

Your rights to have the files and records in your case sealed are set out in more detail in Section 51.16 of the Family Code, which is copied below.

Sec. 51.16. Sealing of Files and Records

"(a) On the application of a person who has been found to have engaged in delinquent conduct or conduct indicating a need for supervision, or a person taken into custody to determine whether he engaged in delinquent conduct or conduct indicating a need for supervision, or on the juvenile court's own motion, the court, after hearing, shall order the sealing of the files and records in the case, including those specified in Sections 51.14 and 51.15 of this code, if the court finds that:

CONTINUED

3 OF 5

(1) two years have elapsed since final discharge of the person, or since the last official action in his case if there was no adjudication;

(2) since the time specified in Subdivision (1) of this subsection, he has not been convicted of a felony or a misdemeanor involving moral turpitude or found to have engaged in delinquent conduct or conduct indicating a need for supervision, and no proceeding is pending seeking conviction or adjudication; and

(3) it is unlikely the person will engage in further delinquent conduct or conduct indicating a need for supervision or will commit a felony or a misdemeanor involving moral turpitude.

(b) The court may grant the relief authorized in Subsection (a) of this section at any time after final discharge of the person or after the last official action in his case if there was no adjudication.

(c) Reasonable notice of the hearing shall be given to:

(1) the person who made the application or who is the subject of the files or records named in the motion;

(2) the prosecuting attorney for the juvenile court;

(3) the authority granting the discharge if the final discharge was from an institution or from parole;

(4) the public or private agency or institution having custody of files or records named in the application or motion; and

(5) the law-enforcement agency having custody of files or records named in the application or motion.

(d) Copies of the sealing order shall be sent to each agency or official therein named.

(e) On entry of the order:

(1) all law-enforcement, prosecuting attorney, clerk of court, and juvenile court files and records ordered sealed shall be sent to the court issuing the order;

(2) all files and records of a public or private agency or institution ordered sealed shall be sent to the court issuing the order;

(3) all index references to the files and records ordered sealed shall be deleted;

(4) the juvenile court, clerk of court, prosecuting attorney, public or private agency or institution, and law-enforcement officers and agencies shall properly reply that no record exists with respect to such person upon inquiry in any matter; and

(5) the adjudication shall be vacated and the proceeding dismissed and treated for all purposes, including the purpose of showing a prior finding of delinquency, as if it had never occurred.

(f) Inspection of the sealed files and records may be permitted thereafter by an order of the juvenile court on the petition of the person who is the subject of the files or records and only by those persons named in the order.

(g) On the final discharge of a child or on the last official action in his case if there is no adjudication, the child shall be given a written explanation of his rights under this section and a copy of the provisions of this section.

Person Issuing Notice:

_____

Date: _____

Time: _____

Child: I have been given the above notice by _____ _____, the person named above, and I fully and clearly understand it.

_____ _____

Witness Child

(one copy should be given the child and another filed with the papers in his case)

MOTION TO SEAL FILES AND RECORDS

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

NOW COMES _____, _____ and moves that files and records in the above-entitled and numbered cause be sealed in accordance with the provisions of Section 51.16, Texas Family Code, and would show the court that:

1. two years have elapsed since final discharge of the person, or since the last official action in his case if there was no adjudication;

2. since the time specified above, he has not been convicted of a felony or a misdemeanor involving moral turpitude or found to have engaged in delinquent conduct or conduct indicating a need for supervision, and no proceeding is pending seeking conviction or adjudication; and

3. it is unlikely the person will engage in further delinquent conduct or conduct indicating a need for supervision or will commit a felony or a misdemeanor involving moral turpitude.

WHEREFORE, PREMISES CONSIDERED, _____ moves that this Court set and conduct a hearing on the issue of sealing the following files and records: _____

_____

_____

_____

in accordance with the provisions of Section 51.16, Texas Family Code and that after said hearing this Court order said files and records in the above-entitled and numbered cause be sealed.

RESPECTFULLY SUBMITTED

_____

_____

NOTICE OF HEARING TO SEAL FILES AND RECORDS

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

You are hereby notified that a hearing to seal files and records in the above-entitled and numbered cause according to the provisions of Section 51.16, Texas Family Code, will be held on the _____ day of _____, 19___, at _____ o'clock ___.M. at _____.

The purpose of the hearing will be to determine whether the following files and records shall be ordered sealed:

ORDER SEALING FILES AND RECORDS

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

ON THIS the _____ day of _____, 19___, came on to be heard the written motion of _____ _____ for the sealing of files and records in the above-entitled and numbered cause according to the provisions of Section 51.16, Texas Family Code. The Court after hearing the evidence finds that two years have elapsed since (final discharge of _____) (the last official action in the case of _____); that since that time, _____ has not been convicted of a felony or a misdemeanor involving moral turpitude or found to have engaged in delinquent conduct or conduct indicating a need for supervision, and no proceeding is pending seeking conviction or adjudication; and that it is unlikely _____ _____ will engage in further delinquent conduct or conduct indication a need for supervision or will commit a felony or a misdemeanor involving moral turpitude.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the following files and records pertaining to _____ in the above-entitled and numbered cause be sealed in accordance with the provisions of Section 51.16, Texas Family Code: _____
_____
_____
_____

ENTERED in open Court, this the _____ day of _____ _____, 19___.

_____
Judge of the _____ Court,
_____ County, Texas,
Sitting As a Juvenile Court in
Said County

ORDER PROHIBITING HARMFUL CONTACTS

No. _____

STATE OF TEXAS
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY,
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

On this the _____ day of _____, 19 ___, came on to be heard the application to prohibit harmful contact in the above numbered and entitled cause. The above-named child was adjudged to have engaged in delinquent conduct/conduct indicating a need for supervision in a hearing held by this court on _____ _____, 19 _____.

And after due notice had been served on all parties as required by law, came and appeared the petitioner by its (County) (District) Attorney and announced ready for such hearing. And thereupon also came the child, who appeared in person, with his/her attorney, _____ (appointed) also being present, and with his/her father, _____, and his/her mother, _____, and his/her guardian ad litem, and the person who has been alleged to be a contributing cause of the child's delinquent conduct/conduct indicating a need for supervision, _____ _____, also being present; and all parties announced ready for such hearing; and thereupon the court after hearing the pleading of all the parties and after hearing the evidence and argument of counsel, finds that the child is in need of rehabilitation/that the protection of (the public) (the child) requires that disposition be made. The court also finds that _____ is a contributing cause of the child's delinquent conduct/conduct indicating a need for supervision.

It further appears to the court that the best interest of the child and the best interest of society will be served by prohibiting further contact between said child and the person who is a contributing cause of his/her conduct by provision of Section 54.041 of the Texas Family Code.

IT IS THEREFORE CONSIDERED AND ADJUDGED BY THE COURT THAT _____/ both the child and _____ _____ be and is (are) enjoined for one year, subject to extensions not to exceed one year, from:

1. contacting the other party to this action (child) in any manner, whether in writing, by telephone, by telegraph, oral conversation, in person, or otherwise;

2. going around the party's home (child) or where the other party (child) may be employed, or any other place where the other party (child) may be;

SIGNED AND ENTERED on this ____ day of _____, A.D. 19____.

_____

Judge of the _____ Court,

_____ County, Texas,

Sitting As a Juvenile Court in

Said County

On entry of the above and foregoing order, the Court instructed the attorney for the child to advise the child and his parent, guardian, or guardian ad litem of the child's right to appeal, of the child's right to representation by counsel on appeal, and of the child's right to appointment of an attorney for appeal if an attorney cannot be obtained because of indigency. The attorney was instructed that if the child, and his parent, guardian, or guardian ad litem express a desire to appeal, the attorney shall file a notice of appeal with this Court and inform this Court whether or not he will handle the appeal.

_____

Juvenile Court Judge

APPLICATION FOR ADMISSION OF MENTALLY RETARDED CHILD

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____COURT
OF _____COUNTY
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

NOW COMES,_____, an adult person and presents this application for admission of a mentally retarded person, and in support thereof shows the Court on information and belief:

1. The child, _____, is alleged by petition to have engaged in delinquent conduct (OR) conduct indicating a need for supervision.

2. The child is a citizen of _____County, and this State as defined by the Mentally Retarded Persons Act.

3. The child is mentally retarded.

4. The child has not been examined at a diagnostic center of the Texas Department of Mental Health and Mental Retardation.

P R A Y E R

Applicant prays that this Court set a date and place a hearing on this application, and that all parties be served with a copy of the application in accordance with the Mentally Retarded Persons Act and Sec. 53.07, Texas Family Code.

Applicant prays that an attorney be appointed to represent the child.

Applicant prays that the Court find that the child is mentally retarded and should be admitted to the jurisdiction of the Texas Department of Mental Health and Mental Retardation.

_____
Applicant

Subscribed and sworn to before me this the _____day of _____, 19____.

_____
Notary Public for _____County, Texas

ORDER DIRECTING DIAGNOSIS AND
REPORT BY TEXAS DEPARTMENT OF MENTAL
HEALTH AND MENTAL RETARDATION

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____ COURT
OF _____ COUNTY
SITTING AS A JUVENILE
COURT

IN THE MATTER OF _____.

On this the _____ day of _____, 197___, came on to be considered the Motion of the State for the Court to enter an order directing that _____ be admitted to the Texas Department of Mental Health and Mental Retardation for diagnosis and evaluation as a mentally retarded child within the meaning of Section 55.03(a) and (b) of the Family Code and Article 3871b, Section 3(l) of the Mentally Retarded Persons Act.

The Court having considered the testimony and evidence presented, it appears that said motion should be and the same is hereby granted.

It is therefore ORDERED that the Chief Juvenile Probation Officer of _____ County or his designee shall promptly transport the Respondent, _____, to _____, _____ Texas. Upon release of the said _____ to the _____ of _____ County of _____, Texas said Probation Officer or his designee shall deliver copies of the psychiatric reports and evaluations and other

available evidence pertaining to the Respondent.

It is further ORDERED that _____ _____, _____ Texas shall take custody of _____ and conduct such psychiatric, psychological and other tests as may be required to determine whether the said _____ _____ is so mentally deficient from any cause as to require special training, education, treatment, care or control for his own, or the community's welfare.

It is further ORDERED that _____ _____, _____ Texas prepare written findings and diagnosis to include the following based on Texas Statutes:

(1) Whether _____ is a "mentally retarded person."

(2) Whether _____ is dangerous to himself or others.

_____ is hereby ordered to answer questions #3 and #4 even though questions #1 and #2 may have been answered in the negative.)

(3) Whether _____ has investigated all available less drastic alternatives of commitment to a State Institution for the mentally ill or retarded persons.

(4) Whether any less drastic alternative of commitment to a State Institution for the mentally ill or retarded persons is suitable and available for the care, control and rehabilitation of _____ _____.

It is further ORDERED that _____ _____ shall forward its findings and diagnosis to this Court on or before _____, 19___,

in compliance with Article 3871b Section 7 (VATS). Pending this Court's receipt of the said findings and diagnosis, the juvenile proceedings herein under the Family Code shall be stayed.

It is further ORDERED that upon completion of its written findings and diagnosis, _____ _____ shall return the said _____ _____to the custody of the Chief Juvenile Probation Officer of _____ County, Texas unless other arrangements have been made and approved by this Court. In the event _____ _____ is returned to the Chief Juvenile Probation Officer of _____ County, Texas, said Officer shall immediately so advise the Court in order that a detention hearing can be held promptly.

It is further ORDERED that in the event the diagnosis, findings, or recommendations of the _____ _____, _____, Texas is unacceptable either to the child, parents, or guardian, then the child shall be entitled to a trial by jury on the issues of whether he/she should be indefinitely committed to the State Institution as provided in Article 3871b of the Mentally Retarded Persons Act, and this cause shall proceed as provided in the Family Code.

SIGNED AND ENTERED this the _____ day of _____, 19___.

_____
Judge of the _____ Court,
_____ County, Texas,
Sitting as a Juvenile Court in
Said County

ORDER OF MENTAL RETARDATION COMMITMENT

No. _____

STATE OF TEXAS,
COUNTY OF _____

IN THE _____COURT
OF _____COUNTY
SITTING AS A JUVENILE
COURT

IN THE MATTER OF_____born on the_____ day of_____ , 19___.

ON this the_____ day of_____ , 19___, came on to be heard the Application and Petition of_____, _____ Attorney of _____ County, Texas, filed with the clerk of this Court on the_____day of_____, 19___, alleging that_____ hereinafter termed Patient, is mentally retarded and requires care and treatment in a facility for mentally retarded persons for the Patient's own welfare and the protection of others.

No jury having been demanded subsequent to the service of the petition and notice of hearing upon Patient having been filed in this cause, all matters of fact and law were submitted to the Court.

It appearing to the Court that all necessary parties having been served with a copy of said Application and Petition and written notice of the time and place of the hearing;_____, representing the State of Texas, and_____, attorney ad litem and_____, attorney representing the Patient, announced ready and appeared for and in behalf of the parties at said hearing.

It further appearing to the Court that_____ was administered a complete Diagnostic Evaluation by _____ _____, which Diagnostic Evaluation consisted of a social history, psychological testing, speech, hearing, and medical assessment, as well as school records evaluation. The results of the said Diagnostic Evaluation were admitted into evidence at the hearing.

It further appearing to the Court that all of the terms and provisions of V.T.C.A. Family Code, Title 3, as well as the Mentally Retarded Persons Act, Article 3871(b) V.A.C.S. have been complied with, and after considering all of the evidence submitted to the Court for adjudication upon the matters of fact as well as of law and the Court having heard the pleadings, evidence, argument of counsel, and certificates filed herein, the Court finds that:

(1) _____is a mentally retarded person.

(2) That_____is not dangerous to himself or others.

(3) That_____has investigated and located a less drastic alternative to commitment to a State Institution for the mentally retarded.

(4) That the _____ _____ has agreed to provide suitable care, control and rehabilitation of _____ _____ at the _____ _____ on a full time basis, effective _____.

Patient is mentally retarded and requires special training, education, treatment, care, or control for his own, or the community's welfare and is hereby committed for an indefinite period as a Patient to the_____ _____, for placement at the _____

It is further ORDERED, ADJUDGED AND DECREED that the

_____ County Juvenile Probation Department, having the proper interest in the welfare of the Patient is a proper person to transport the Patient to the above designated placement and the Clerk of this Court is hereby ordered and directed to issue a writ of commitment in duplicate to said party authorizing and commanding said party to take charge of the Patient and to transport the Patient to the above designated placement.

It is further ORDERED, ADJUDGED AND DECREED that the head of _____, upon receiving a copy of the Writ of Commitment and admitting the Patient, shall give the person transporting the Patient a written statement acknowledging acceptance of the Patient and of any personal property belonging to the Patient and shall file a copy with the Clerk of this Court.

It is further ORDERED, ADJUDGED and DECREED that the Applicant in this cause, the Juvenile Probation Department, and the Clerk of this Court, cause to be prepared a property and financial statement be included in the transcript of these proceedings to be sent to _____, and a copy to be included in a transcript of these proceedings to be sent to the head of the_____ _____ to which Patient is committed.

The Clerk of this Court is further ordered to prepare two certified transcripts of the proceedings in this cause and to send one to _____, and one to the head of the_____ _____to which Patient is committed.

SIGNED AND ENTERED on this the_____ day of _____19___.

_____
Judge of the _____Court,
_____County, Texas
Sitting As a Juvenile Court in
Said County

Texas Department of Mental Health and Mental Retardation

APPLICATION FOR ADMISSION
TO
TEXAS STATE SCHOOL FOR THE MENTALLY RETARDED

I. IDENTIFYING INFORMATION:

Name_____Called_____

Race_____Sex_____Height_____Weight_____

Age_____Birthdate_____Religion_____

Father's Name_____

Mother's Maiden Name_____

Father's Address_____City_____County_____

Mother's Address_____City_____County_____

Father's Phone Number_____ Mother's Phone Number_____

Parents divorced? (yes or no)_____If yes, who has custody?_____

(Please include copy of divorce decree)

Does applicant have a court appointed guardian? (yes or no)_____

If yes, complete and provide copy of guardianship papers:

Guardian's Name_____Address_____

Relationship_____Date appointed guardian_____

What court?_____

Why was custody (or guardianship) removed from parents?_____

_____

Who is caring for applicant now?_____

If other than parents, please complete:

Where is applicant being cared for:_____

If other than natural home, when was he placed there?_____

_____Why?_____

_____

II. PRESENTING PROBLEMS:

Please describe the applicant's problems, if any:

Medical: _____

_____

Behavioral: _____

_____

III. APPLICANT CHARACTERISTICS:

A. Ambulation: Walks?_____ Bedfast?_____

B. Sensory Limitations:

Blind: No_____ Partially_____ Completely_____

Deaf: No_____ Partially_____ Completely_____

C. Self-Help Skills:

Feeds self: Yes_____ No_____ Partially_____

Dresses self: Yes_____ No_____ Partially_____

Toilet trained: Yes_____ No_____ Partially_____

Bathes self: Yes_____ No_____ Partially_____

D. Speech: Talks understandably Yes_____ No_____

IV. LIST ANY CONTACTS WITH SOCIAL AGENCIES, CLINICS, SPECIALISTS, PSYCHOLOGISTS, GIVING DATES, NAMES OF AGENCIES, AND THEIR ADDRESSES. IF POSSIBLE, GIVE NAMES OF INDIVIDUAL CONTACTED AT THESE AGENCIES:

_____

_____

_____

_____

_____

_____

PLEASE REQUEST THAT RECORDS FROM THE ABOVE BE FORWARDED TO US.

Date of Application

Signature of person legally responsible for the applicant

INCLUDE a letter explaining, in your own words, why you desire the applicant's admission to a State School. This should include (a) a detailed description of the problems the applicant presents; (b) where he is now; (c) why you feel the present situation should not continue; and (d) what you think the School can do for the applicant.

PLEASE INCLUDE WITH APPLICATION:

1. Copy of birth certificate
2. Client photograph
3. Copy of divorce decree (if applicable)
4. Copy of guardianship papers (if applicable)

Texas Department of Mental Health and Mental Retardation

FAMILY HISTORY STATEMENT

APPLICANT'S NAME _____ DATE STATEMENT COMPLETED _____

NATURAL PARENTS	Birth Date	Birth place	Education	Marriage Date	Divorce Date	Death Date
Father		City ST				
Mother						
Whole Brothers & Sisters of Applicant				Employment	Current Address	
OTHER MARRIAGES				Marriage Date	Divorce Date	Death Date
Wives						
Husbands						
Children of Other Marriages						
Foster Parents						

Has Applicant been married? Yes____ No____
Has Applicant had any children? Yes____ No____

MOTHER'S IMMEDIATE FAMILY			FATHER'S IMMEDIATE FAMILY		
Name	Relationship	Address	Name	Relationship	Address

EMPLOYMENT OF PARENTS

List Date and Type of Employment for Last Three Positions

FATHER	MOTHER

Texas Department of Mental Health and Mental Retardation

MEDICAL HISTORY
(To be filled out by the family
with assistance of the physician)

Applicant's Name_____Birthdate_____County_____

To the Physician:

The student will have a complete physical examination at the time of his entrance into the School's program. However, his admission is dependent upon the availability of facilities which meet his specific needs as determined from this history.

Since in the profession we realize there is "no cure" for mental retardation, our only valid tool in its alleviation is prophylaxis. We would like your studied opinion as to the etiology of the mental retardation. Please feel free to expand on this form or to add a narrative medical summary.

Your cooperation is appreciated.

A. BIRTH AND NEONATAL HISTORY

I. PRENATAL HISTORY

a. Blood group and type of Mother_____Father_____

b. Mother's general health during pregnancy (Please be as detailed as possible)

1. Infections

2. Radiological exposure

3. Toxic or drug exposure

4. Regulatory hormone therapy

5. Vaginal bleeding

6. Surgery

7. Serology

8. Age at time of child's birth

9. State of nutrition

10. Previous sterility problem?

11. Prior conception loss

How many?

12. Hypertension

13. Diabetes

II BIRTH HISTORY

a. Was child born in hospital? (List name and location)_____

_____or home_____

b. Type of delivery

1. Delivered by physician_____midwife_____or other_____

c. Condition of mother immediately after delivery

d. Complications (type)

III NEONATAL HISTORY (Please be as detailed as possible)

a. Birth injuries

b. Immediate condition of infant

c. Required therapy

d. Important illnesses or findings in neonatal period

IV. FEEDING HISTORY

a. Unusual features

V. DEVELOPMENTAL HISTORY

a. Time when mental deficiency was suspected and/or diagnosed

b. Examples of abnormal (unusual) behavior

VI. PAST ILLNESSES (Please emphasize conditions which might have caused mental retardation)

a. Head injuries

b. Acute illnesses

c. Diagnostic studies and conclusions

1. Office

2. Medical centers

d. Operations (Pathology)

1. Corrective orthopedic procedures

B. REVIEW OF SYSTEMS

1. GENERAL HEALTH (Please describe any precipitating problems requiring admission)

II. NEUROLOGICAL AND PSYCHIATRIC OBSERVATIONS

a. Seizures Type_____ Onset_____

Frequency_____ Severity_____

Controlled by

Medication found ineffective

b. Cerebral Palsy Type_____

Extent: Minor_____ Partial_____ Extremely Disabling_____

Past hospitalization for cerebral palsy

c. Activity: Normal_____ Hypoactive_____ Hyperactive_____

Controlled by

Medications found ineffective

d. Behavior difficulties (Describe specifically)

III. RESPIRATORY AND CARDIOVASCULAR

a. Frequency of pneumonia_____ Frequency of U.R.I._____

b. History of rheumatic fever with sequellae

c. Tuberculosis (Note current hospitalization)

d. Heart (Describe congenital or acquired lesions)

IV. SENSORY (Please describe pertinent difficulties and ability to compensate for handicaps)

a. Eyes - Gross pathology

Corrective surgery

Corrective lens Rx., if possible

b. Ears - Infections

Hearing adequacy

V. GASTROINTESTINAL

a. Abnormal appetite

b. Vomiting

c. Constipation

d. Dysphagia or other abnormalities

e. History of intubation or other type of maintaining nutrition

VI. GENITOURINARY Trained_____Untrained_____Incontinent_____

a. Is indwelling catheter required?

b. Menstrual difficulties

VII. EXTREMITIES

a. Infirmities

b. Corrective surgery

c. History of pathological fractures

d. Bedfast_____Partially ambulatory_____Ambulatory_____

e. Requires: Crutches_____Wheelchair_____Braces_____

f. Special equipment

VIII. SKIN (Acute or chronic findings)

a. Diagnosis

b. Medications used successfully

C. PERTINENT DATA FROM OFFICE RECORDS

D FAMILY HISTORY

1. List parents and siblings with ages. If dead, list cause of death. If ill, etiology of illness.

_____

_____

_____

II. Are any other members of the family: (If so, what relation to the patient?)

a. Mentally retarded_____
b. Blind_____
c. Deaf_____
d. Mute_____
e. Paralyzed_____
f. Psychotic_____
g. Congenitally deformed_____
h. Have seizures_____

III. Do any other members of the family have: (If so, what relation to the patient?)

a. Congenital deformities_____
b. Hydrocephaly_____
c. Hyperostosis_____
d. Exotrophy of bladder_____
e. Cleft palate_____

IV. Has anyone in the family had: (If so, what relation to the patient?)

a. Tuberculosis_____
b. Syphilis_____
c. Rheumatic Fever_____
d. Carcinoma_____
e. Hypertension_____
f. Histoplasmosis_____
g. Paralyses_____
h. Endocrine disturbances_____
i. Serious illnesses of any type_____

E. YOUR DIAGNOSIS

F. PRESENT MEDICATION

G. SPECIAL MEDICAL CARE PROGRAM

_____ _____

Date Signature of Physician

14.122

Texas Department of Mental Health and Mental Retardation

ENDORSEMENT OF APPLICATION
FOR
TEXAS STATE SCHOOLS FOR THE MENTALLY RETARDED

Name of Community Mental Health and Mental Retardation Center:

_____

Name of Applicant: _____
LAST FIRST MIDDLE

Birthdate: _____ Sex: ____ Ethnic Group: _____
Month Day Year

Parent's Name: _____ Phone: _____

Address: _____

Guardian's Name: _____ Phone: _____

Address: _____

A. In planning with the above named client and/or his parents or guardians, the following local or state resources have been used or attempted:

NAME OF FACILITY	ADDRESS OF FACILITY	DATE USED/ATTEMPTED	REPORT ENCLOSED (PLEASE CHECK)

B. After careful planning with the family or guardian, it is our opinion that residential placement is the best resource for the applicant for the following reasons: (Please explain your reasons for the above stated opinion, include recommendations as to the type of care and training you feel the applicant should receive at the State School and the resources the family and community have available for the return of the applicant once he has received full benefit from the school.)

_____

_____

_____
(continue on back if necessary)

_____ _____
APPROVED BY: DATE:

_____
Signature and Title

APPENDICES

STATUTES AND RULES

Title 3, Texas Family Code

TITLE 3. DELINQUENT CHILDREN AND CHILDREN IN NEED OF SUPERVISION

Chapter

51. General Provisions.
52. Proceedings Before and Including Referral to Juvenile Court.
53. Proceedings Prior to Judicial Proceedings.
54. Judicial Proceedings.
55. Proceedings Concerning Children With Mental Illness, Retardation, Disease, or Defect.
56. Appeal.

CHAPTER 51. GENERAL PROVISIONS

Section

51.01. Purpose and Interpretation.
51.02. Definitions.
51.03. Delinquent Conduct; Conduct Indicating a Need for Supervision.
51.04. Jurisdiction.
51.05. Court Sessions and Facilities.
51.06. Venue.
51.07. Transfer to Another County.
51.08. Transfer from Criminal Court.
51.09. Waiver of Rights.
51.10. Right to Assistance of Attorney; Compensation.
51.11. Guardian Ad Litem.
51.12. Place and Conditions of Detention.
51.13. Effect of Adjudication or Disposition.
51.14. Files and Records.
51.15. Fingerprints and Photographs.
51.16. Sealing of Files and Records.
51.17. Procedure.

Sec. 51.01. Purpose and Interpretation

"This title shall be construed to effectuate the following public purposes:

(1) to provide for the care, the protection, and the wholesome moral, mental, and physical development of children coming within its provisions;

(2) to protect the welfare of the community and to control the commission of unlawful acts by children;

(3) consistent with the protection of the public interest, to remove from children committing unlawful acts the taint of criminality and the consequences of criminal behavior and to substitute a program of treatment, training, and rehabilitation;

(4) to achieve the foregoing purposes in a family environment whenever possible, separating the child from his parents only when necessary for his welfare or in the interest of public safety and when a child is removed from his family, to give him the care that should be provided by parents; and

(5) to provide a simple judicial procedure through which the provisions of this title are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced.

Sec. 51.02. Definitions

"In this title:

(1) "Child" means a person who is:

(A) ten years of age or older and under 17 years of age; or

(B) seventeen years of age or older and under 18 years of age 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 becoming 17 years of age.

(2) 'Parent' means the mother, the father whether or not the child is legitimate, or an adoptive parent, but does not include a parent whose parental rights have been terminated.

(3) "Guardian" means the person who, under court order, is the guardian of the person of the child or the public or private agency with whom the child has been placed by a court.

(4) "Custodian" means the adult with whom the child resides.

(5) "Juvenile court" means a court designated under Section 51.04 of this code to exercise jurisdiction over proceedings under this title.

(6) "Judge" or "juvenile court judge" means the judge of a juvenile court.

(7) "Prosecuting attorney" means the county attorney, district attorney, or other attorney who regularly serves in a prosecutory capacity in a juvenile court.

(8) "Law-enforcement officer" means a peace officer as defined by Article 2.12, Texas Code of Criminal Procedure.

(9) "Traffic offense" means:

(A) a violation of a penal statute cognizable under Chapter 302, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 802e, Vernon's Texas Penal Code); or

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

(10) "Party" means the state, a child who is the subject of proceedings under this subtitle, or the child's parent, spouse, guardian, or guardian ad litem.

Sec. 51.03. Delinquent Conduct; Conduct Indicating a Need for Supervision

"(a) Delinquent conduct is conduct, other than a traffic offense, that violates:

"(1) a penal law of this state punishable by imprisonment or by confinement in jail; or

"(2) a reasonable and lawful order of a juvenile court entered under Section 54.04 or 54.05 of this code, including an order prohibiting conduct referred to in Subsection (b)(4) of this section.

(b) Conduct indicating a need for supervision is:

(1) conduct, other than a traffic offense, 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;

(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; or

(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).

(c) Nothing in this title prevents criminal proceedings against a child for perjury.

(d) For the purpose of Subsection (b)(2) of this section an absence is excused when the absence results from:

(1) illness of the child;

(2) illness or death in the family of the child;

(3) quarantine of the child and family;

(4) weather or road conditions making travel dangerous;

(5) an absence approved by a teacher, principal, or superintendent of the school in which the child is enrolled; or

(6) circumstances found reasonable and proper.

Sec. 51.04. Jurisdiction

(a) This title covers the proceedings in all cases involving the delinquent conduct or conduct indicating a need for supervision engaged in by a person who was a child within the meaning of this title at the time he engaged in the conduct, and the juvenile court has exclusive original jurisdiction over proceedings under this title.

(b) In a county having a juvenile board, the board shall designate one or more district, criminal district, domestic relations, juvenile, or county courts or county courts at law as the juvenile court, subject to Subsection (d) of this section.

(c) In a county not having a juvenile board, the judges of the district, criminal district, domestic relations, juvenile, and county courts and county courts at law shall designate one or more of their courts as the juvenile court, subject to Subsection (d) of this section.

(d) A court may not be designated as the juvenile court unless its presiding judge:

(1) is an attorney licensed to practice law in this state; or

(2) if in a county with 50,000 or fewer inhabitants, is a nonlawyer who has served as the judge of a county court in this state for at least four years. However, if a nonlawyer is the juvenile judge he may not preside over an adjudication, disposition, or certification hearing.

(3) if the judge in (2) above has successfully completed 60 or more hours from an accredited school of law.

(c) A designation made under Subsection (b) or (c) of this section may be changed from time to time by the authorized boards or judges for the convenience of the people and the welfare of children. However, there must be at all times a juvenile court designated for each county. It is the intent of the legislature that in selecting a court to be the juvenile court of each county, the selection shall be made as far as practicable so that the court designated as the juvenile court will be one which is presided over by a judge who has a sympathetic understanding of the problems of child welfare and that changes in the designation of juvenile courts be made only when the best interest of the public requires it.

(f) If the judge of the juvenile court or any alternate judge named under Subsection (b) or (c) of this section is not in the county or is otherwise unavailable, any magistrate may conduct the detention hearing provided for in Section 54.01 of this code.

(g) The juvenile board, or if there is no juvenile board, the juvenile court, may appoint a referee to conduct hearings under this title and in accordance with Section 54.10 of this code. The referee shall be an attorney licensed to practice law in this state. Payment of any referee services shall be provided from county funds.

Sec. 51.05. Court Sessions and Facilities

(a) The juvenile court shall be deemed in session at all times. Suitable quarters shall be provided by the commissioners court of each county for the hearing of cases and for the use of the judge, the probation officer, and other employees of the court.

(b) The juvenile court and the juvenile board shall report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and may make recommendations for their improvement.

Sec. 51.06. Venue

(a) A proceeding under this title shall be commenced in:

(1) the county in which the child resides; or

(2) the county in which the alleged delinquent conduct or conduct indicating a need for supervision occurred.

(b) An application for a writ of habeas corpus brought by or on behalf of a child who has been committed to an institution under the jurisdiction of the Texas Youth Council and which attacks the validity of the judgment of commitment shall be brought in the county in which the court that entered the judgment of commitment is located.

Sec. 51.07. Transfer to Another County

(a) When a child has been found to have engaged in delinquent conduct or conduct indicating a need for supervision under Section 54.03 of this code, the juvenile court, with the consent of the child and appropriate adult given in accordance with Section 51.09 of this code, may transfer the case and transcripts of records and documents to the juvenile court of the county where the child resides for disposition of the case under Section 54.04 of this code.

(b) When a child who is on probation moves with his family from one county to another, the juvenile court may tranfer the case to the juvenile court in the county of the child's new residence if the transfer is in the best interest of the child. In all other cases of transfer, consent of the receiving court is required. The transferring court shall forward transcripts of records and documents in the case to the judge of the receiving court.

Sec. 51.08. Transfer from Criminal Court

If the defendant in a criminal proceeding is a child who is charged with an offense other than perjury or a traffic offense, 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

Sec. 51.09. Waiver of Rights

(a) Unless a contrary intent clearly appears elsewhere in this title, any right granted to a child by this title or by the constitution or laws of this state or the United States may be waived in proceedings under this title if:

(1) the waiver is made by the child and the attorney for the child;

(2) the child and the attorney waiving the right are informed of and understand the right and the possible consequences of waiving it;

(3) the waiver is voluntary; and

(4) the waiver is made in writing or in court proceedings that are recorded.

(b) Notwithstanding any of the provisions of Subsection (a) of this section, the statement of a child is admissible in evidence in any future proceeding concerning the matter about which the statement was given if:

(1) when the child is in a detention facility or other place of confinement or in the custody of an officer, the statement is made in writing and the statement shows that the child has at some time prior to the making thereof received from a magistrate a warning that:

(A) he may remain silent and not make any statement at all and that any statement he makes may be used in evidence against him;

(B) he has the right to have an attorney present to advise him either prior to any questioning or during the questioning;

(C) if he is unable to employ an attorney, he has the right to have an attorney to counsel with him prior to or during any interviews with peace officers or attorneys representing the state;

(D) he has the right to terminate the interview at any time;

(E) if he is 15 years of age or older at the time of the violation of a penal law of the grade of felony the juvenile court may waive its jurisdiction and he may be tried as an adult; and

(F) the statement must be signed in the presence of a magistrate by the child with no law enforcement officer or prosecuting attorney present. The magistrate must be fully convinced that the child understands the nature and contents of the statement and that the child is signing the same voluntarily. If such a statement is taken, the magistrate shall sign a written statement verifying the foregoing requisites have been met.

The child must knowingly, intelligently, and voluntarily waive these rights prior to and during the making of the statement and sign the statement in the presence of a magistrate who must certify that he has examined the child independent of any law enforcement officer or prosecuting attorney and determined that the child understands the nature and contents of the statement and has knowingly, intelligently, and voluntarily waived these rights.

(2) it be made orally and the child makes a statement of facts or circumstances that are found to be true, which conduct tends to establish his guilt, such as the finding of secreted or stolen property, or the instrument with which he states the offense was committed.

(3) the statement was res gestae of the delinquent conduct or the conduct indicating a need for supervision or of the arrest.

Sec. 51.10. Right to Assistance of Attorney; Compensation

"(a) A child may be represented by an attorney at every stage of proceedings under this title, including:

(1) the detention hearing required by Section 54.01 of this code;
(2) the hearing to consider transfer to criminal court required by Section 54.02 of this code;
(3) the adjudication hearing required by Section 54.03 of this code;
(4) the disposition hearing required by Section 54.04 of this code;
(5) the hearing to modify disposition required by Section 54.05 of this code;
(6) hearings required by Chapter 55 of this code;
(7) habeas corpus proceedings challenging the legality of detention resulting from action under this title; and
(8) proceedings in a court of civil appeals or the Texas Supreme Court reviewing proceedings under this title.

(b) The child's right to representation by an attorney shall not be waived in:

(1) a hearing to consider transfer to criminal court as required by Section 54.02 of this code;
(2) an adjudication hearing as required by Section 54.03 of this code;
(3) a disposition hearing as required by Section 54.04 of this code;
(4) a hearing prior to commitment to the Texas Youth Council as a modified disposition in accordance with Section 54.05(f) of this code; or
(5) hearings required by Chapter 55 of this code.

(c) If the child was not represented by an attorney at the detention hearing required by Section 54.01 of this code and a determination was made to detain the child, the child shall immediately be entitled to representation by an attorney. The court may order the retention of an attorney according to Section 51.10(d) of this code or appoint an attorney according to Section 51.10(f) of this code.

(d) The court shall order a child's parent or other person responsible for support of the child to employ an attorney to represent the child, if:

(1) the child is not represented by an attorney;
(2) after giving the appropriate parties an opportunity to be heard, the court determines that the parent or other person responsible for support of the child is financially able to employ an attorney to represent the child; and
(3) the child's right to representation by an attorney:
(A) has not been waived under Section 51.09 of this code; or
(B) may not be waived under Subsection (b) of this section.

(e) The court may enforce orders under Subsection (c) of this section by proceedings under Section 54.07 of this code or by appointing counsel and ordering the parent or other person responsible for support of the child to pay a reasonable attorney's fee set by the court. The order may be enforced under Section 54.07 of this code.

(f) The court shall appoint an attorney to represent the interest of a child entitled to representation by an attorney, if:

(1) the child is not represented by an attorney;

(2) the court determines that the child's parent or other person responsible for support of the child is financially unable to employ an attorney to represent the child; and

(3) the child's right to representation by an attorney:

(A) has not been waived under Section 51.09 of this code; or

(B) may not be waived under Subsection (b) of this section.

(g) The juvenile court may appoint an attorney in any case in which it deems representation necessary to protect the interests of the child.

(h) Any attorney representing a child in proceedings under this title is entitled to 10 days to prepare for any adjudication or transfer hearing under this title.

(i) Except as provided in Subsection (d) of this section, an attorney appointed under this section to represent the interests of a child shall be paid from the general fund of the county in which the proceedings were instituted according to the schedule in Article 26.05 of the Texas Code of Criminal Procedure, 1965. For this purpose, a bona fide appeal to a court of civil appeals or proceedings on the merits in the Texas Supreme Court are considered the equivalent of a bona fide appeal to the Texas Court of Criminal Appeals.

Sec. 51.11. Guardian Ad Litem

(a) If a child appears before the juvenile court without a parent or guardian, the court shall appoint a guardian ad litem to protect the interests of the child. The juvenile court need not appoint a guardian ad litem if a parent or guardian appears with the child.

(b) In any case in which it appears to the juvenile court that the child's parent or guardian is incapable or unwilling to make decisions in the best interest of the child with respect to proceedings under this title, the court may appoint a guardian ad litem to protect the interests of the child in the proceedings.

(c) An attorney for a child may also be his guardian ad litem. A law-enforcement officer, probation officer, or other employee of the juvenile court may not be appointed guardian ad litem.

Sec. 51.12. Place and Conditions of Detention

(a) Except after transfer to criminal court for prosecution under Section 54.02 of this code, a child shall not be detained in or committed to a compartment of a jail or lockup in which adults arrested for, charged with, or convicted of crime are detained or committed, nor be permitted contact with such persons.

(b) The proper authorities in each county shall provide a suitable place of detention for children who are parties to proceedings under this title, but the juvenile court shall control the conditions and terms of detention and detention supervision and shall permit visitation with the child at all reasonable times.

(c) In each county, the judge of the juvenile court and the members of the juvenile board, if there is one, shall personally inspect the detention facilities at least annually and shall certify in writing to the authorities responsible for operating and giving financial support to the facilities that they are suitable or unsuitable for the detention of children in accordance with:

(1) the requirements of Subsection (a) of this section;

(2) the requirements of Article 5115, Revised Civil Statutes of Texas, 1925, as amended, defining 'safe and suitable jails,' if the detention facility is a county jail; and

(3) recognized professional standards for the detention of children.

(d) No child shall be placed in a facility that has not been certified under Subsection (c) of this section as suitable for the detention of children. A child detained in a facility that has not been certified under Subsection (c) of this section as suitable for the detention of children shall be entitled to immediate release from custody in that facility.

(e) If there is no certified place of detention in the county in which the petition is filed, the designated place of detention may be in another county.

Sec. 51.13. Effect of Adjudication or Disposition

(a) An order of adjudication or disposition in a proceeding under this title is not a conviction of crime, and does not impose any civil disability ordinarily resulting from a conviction or operate to disqualify the child in any civil service application or appointment.

(b) The adjudication or disposition of a child or evidence adduced in a hearing under this title may be used only in subsequent proceedings under this title in which the child is a party or in subsequent sentencing proceedings in criminal court against the child to the extent permitted by the Texas Code of Criminal Procedure, 1965.

(c) A child may not be committed or transferred to a penal institution or other facility used primarily for the execution of sentences of persons convicted of crime, except:

(1) for temporary detention in a jail or lockup pending juvenile court hearing or disposition under conditions meeting the requirements of Section 51.12 of this code; or

(2) after transfer for prosecution in criminal court under Section 54.02 of this code.

Sec. 51.14. Files and Records

(a) All files and records of a juvenile court, a clerk of court, or a prosecuting attorney relating to a child who is a party to a proceeding under this title are open to inspection only by:

(1) the judge, probation officers, and professional staff or consultants of the juvenile court;

(2) an attorney for a party to the proceeding;

(3) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or

(4) with leave of juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

(b) All files and records of a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court are open to inspection only by:

(1) the professional staff or consultants of the agency or institution;

(2) the judge, probation officers, and professional staff or consultants of the juvenile court;

(3) an attorney for the child; or

(4) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the work of the agency or institution.

(c) Law-enforcement files and records concerning a child shall be kept separate from files and records of arrests of adults and shall be maintained on a local basis only and not sent to a central state or federal depository.

(d) Except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

(1) a juvenile court having the child before it in any proceeding;
(2) an attorney for a party to the proceeding; and
(3) law-enforcement officers when necessary for the discharge of their official duties.

Sec. 51.15. Fingerprints and Photographs

(a) No child may be fingerprinted without the consent of the juvenile court except as provided in Subsection (f) of this section. However, if a child 15 years of age or older is referred to the juvenile court for a felony, his fingerprints may be taken and filed by a law-enforcement officer investigating the case.

(b) No child taken into custody may be photographed without the consent of the juvenile court unless the child is transferred to criminal court for prosecution under Section 54.02 of this code.

(c) Fingerprint and photograph files or records of children shall be kept separate from those of adults, and fingerprints or photographs known to be those of a child shall be maintained on a local basis only and not sent to a central state or federal depository.

(d) Fingerprint and photograph files or records of children are subject to inspection as provided in Subsections (a) and (d) of Section 51.14 of this code.

(e) Fingerprints and photographs of a child shall be removed from files or records and destroyed if:

(1) a petition alleging that the child engaged in delinquent conduct or conduct indicating a need for supervision is not filed, or the proceedings are dismissed after a petition is filed, or the child is found not to have engaged in the alleged conduct; or
(2) the person reaches 18 years of age and there is no record that he committed a criminal offense after reaching 17 years of age.

(f) If latent fingerprints are found during the investigation of an offense, and a law-enforcement officer has reasonable cause to believe that they are those of a particular child, if otherwise authorized by law, he may fingerprint the child regardless of the age or offense for purpose of immediate comparison with the latent fingerprints. If the comparison is negative, the fingerprint card and other copies of the fingerprints taken shall be destroyed immediately. If the comparison is positive, and the child is referred to the juvenile court, the fingerprint card and other copies of the fingerprints taken shall be delivered to the court for disposition. If the child is not referred to the court, the fingerprint card and other copies of the fingerprints taken shall be destroyed immediately.

(g) When destruction of fingerprints or photographs is required by Subsection (e) or (f) of this section, the agency with custody of the fingerprints or photographs shall proceed with destruction without judicial order. However, if the fingerprints or photographs are not destroyed, the juvenile court, on its own motion or on application by the person fingerprinted or photographed, shall order the destruction as required by this section.

Sec. 51.16. Sealing of Files and Records

"(a) On the application of a person who has been found to have engaged in delinquent conduct or conduct indicating a need for supervision, or a person taken into custody to determine whether he engaged in delinquent conduct or conduct indicating a need for supervision, or on the juvenile court's own motion, the court, after hearing, shall order the sealing of the files and records in the case, including those specified in Sections 51.14 and 51.15 of this code, if the court finds that:

(1) two years have elapsed since final discharge of the person, or since the last official action in his case if there was no adjudication;

(2) since the time specified in Subdivision (1) of this subsection, he has not been convicted of a felony or a misdemeanor involving moral turpitude or found to have engaged in delinquent conduct or conduct indicating a need for supervision, and no proceeding is pending seeking conviction or adjudication; and

(3) it is unlikely the person will engage in further delinquent conduct or conduct indicating a need for supervision or will commit a felony or a misdemeanor involving moral turpitude.

(b) The court may grant the relief authorized in Subsection (a) of this section at any time after final discharge of the person or after the last official action in his case if there was no adjudication.

(c) Reasonable notice of the hearing shall be given to:

(1) the person who made the application or who is the subject of the files or records named in the motion;

(2) the prosecuting attorney for the juvenile court;

(3) the authority granting the discharge if the final discharge was from an institution or from parole;

(4) the public or private agency or institution having custody of files or records named in the application or motion; and

(5) the law-enforcement agency having custody of files or records named in the application or motion.

(d) Copies of the sealing order shall be sent to each agency or official therein named.

(e) On entry of the order:

(1) all law-enforcement, prosecuting attorney, clerk of court, and juvenile court files and records ordered sealed shall be sent to the court issuing the order;

(2) all files and records of a public or private agency or institution ordered sealed shall be sent to the court issuing the order;

(3) all index references to the files and records ordered sealed shall be deleted;

(4) the juvenile court, clerk of court, prosecuting attorney, public or private agency or institution, and law-enforcement officers and agencies shall properly reply that no record exists with respect to such person upon inquiry in any matter; and

(5) the adjudication shall be vacated and the proceeding dismissed and treated for all purposes, including the purpose of showing a prior finding of delinquency, as if it had never occurred.

(f) Inspection of the sealed files and records may be permitted thereafter by an order of the juvenile court on the petition of the person who is the subject of the files or records and only by those persons named in the order.

(g) On the final discharge of a child or on the last official action in his case if there is no adjudication, the child shall be given a written explanation of his rights under this section and a copy of the provisions of this section.

(h) A person whose files and records have been sealed under this Act is not required in any proceeding or in any application for employment, information, or licensing to state that he has been the subject of a proceeding under this Act; and any statement that he has never been found to be a delinquent child shall never be held against the person in any criminal or civil proceeding.

Sec. 51.17. Procedure

Except when in conflict with a provision of this title, the Texas Rules of Civil Procedure govern proceedings under this title. Particular reference is made to the burden of proof to be borne by the state in adjudicating a child to be delinquent or in need of supervision [Section 54.03(f)].

CHAPTER 52. PROCEEDINGS BEFORE AND INCLUDING REFERRAL TO JUVENILE COURT

Section
52.01. Taking Into Custody; Issuance of Warning Notice.
52.02. Release or Delivery to Court.
52.03. Disposition Without Referral to Court.
52.04. Referral to Juvenile Court.

Sec. 52.01. Taking Into Custody; Issuance of Warning Notice

(a) A child may be taken into custody:
(1) pursuant to an order of the juvenile court under the provisions of this subtitle;
(2) pursuant to the laws of arrest;
(3) by a law-enforcement officer if there are reasonable grounds to believe that the child has engaged in delinquent conduct or conduct indicating a need for supervision; or
(4) by a probation officer if there are reasonable grounds to believe that the child has violated a condition of probation imposed by the juvenile court.

(b) The taking of a child into custody is not an arrest except for the purpose of determining the validity of taking him into custody or the validity of a search under the laws and constitution of this state or of the United States.

(c) A law-enforcement officer authorized to take a child into custody under Subdivisions (2) and (3) of Subsection (a) of this section may issue a warning notice to the child in lieu of taking him into custody if:
(1) guidelines for warning disposition have been issued by the law-enforcement agency in which the officer works;
(2) the guidelines have been approved by the juvenile court of the county in which the disposition is made;
(3) the disposition is authorized by the guidelines;
(4) the warning notice identifies the child and describes his alleged conduct;
(5) a copy of the warning notice is sent to the child's parent, guardian, or custodian as soon as practicable after disposition; and
(6) a copy of the warning notice is filed with the law-enforcement agency and the office or official designated by the juvenile court.

(d) A warning notice filed with the office or official designated by the juvenile court may be used as the basis of further action if necessary.

Sec. 52.02. Release or Delivery to Court

(a) A person taking a child into custody, without unnecessary delay and without first taking the child elsewhere, shall do one of the following:
(1) release the child to his parent, guardian, custodian, or other responsible adult upon that person's promise to bring the child before the juvenile court when requested by the court;
(2) bring the child before the office or official designated by the juvenile court;
(3) bring the child to a detention facility designated by the juvenile court;
(4) bring the child to a medical facility if the child is believed to suffer from a serious physical condition or illness that requires prompt treatment; or
(5) dispose of the case under Section 52.03 of this code.

(b) A person taking a child into custody shall promptly give notice of his action and a statement of the reason for taking the child into custody, to:

(1) the child's parent, guardian, or custodian; and
(2) the office or official designated by the juvenile court.

Sec. 52.03. Disposition Without Referral to Court

(a) A law-enforcement officer authorized by this title to take a child into custody may dispose of the case of a child taken into custody without referral to juvenile court, if:

(1) guidelines for such disposition have been issued by the law-enforcement agency in which the officer works;
(2) the guidelines have been approved by the juvenile court of the county in which the disposition is made;
(3) the disposition is authorized by the guidelines; and
(4) the officer makes a written report of his disposition to the law-enforcement agency, identifying the child and specifying the grounds for believing that the taking into custody was authorized.

(b) No disposition authorized by this section may involve:

(1) keeping the child in law-enforcement custody; or
(2) requiring periodic reporting of the child to a law-enforcement officer, law-enforcement agency, or other agency.

(c) A disposition authorized by this section may involve:

(1) referral of the child to an agency other than the juvenile court; or
(2) a brief conference with the child and his parent, guardian, or custodian.

(d) Statistics indicating the number and kind of dispositions made by a law-enforcement agency under the authority of this section shall be reported at least annually to the office or official designated by the juvenile court, as ordered by the court.

Sec. 52.04. Referral to Juvenile Court

[1](a) The following shall accompany referral of a child or a child's case to the office or official designated by the juvenile court or be provided as quickly as possible after referral:

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

(b) The office or official designated by the juvenile court may refer the case to a law-enforcement agency for the purpose of conducting an investigation to obtain necessary information.

CHAPTER 53. PROCEEDINGS PRIOR TO JUDICIAL PROCEEDINGS

Section

53.01. Preliminary Investigation and Determinations; Notice to Parents.
53.02. Release from Detention.
53.03. Intake Conference and Adjustment.
53.04. Court Petition; Answer.
53.05. Time Set for Hearing.
53.06. Summons.
53.07. Service of Summons.

Sec. 53.01. Preliminary Investigation and Determinations; Notice to Parents

(a) On referral of a child or a child's case to the office or official designated by the juvenile court, the intake officer, probation officer, or other person authorized by the court shall conduct a preliminary investigation to determine whether:

(1) the person referred to juvenile court is a child within the meaning of this title;

(2) there is probable cause to believe the child engaged in delinquent conduct or conduct indicating a need for supervision; and

(3) further proceedings in the case are in the interest of the child or the public.

(b) If it is determined that the person is not a child, or there is no probable cause, or further proceedings are not warranted, the child shall immediately be released and proceedings terminated.

(c) When custody of a child is given to the office or official designated by the juvenile court, the intake officer, probation officer, or other person authorized by the court shall promptly give notice of the whereabouts of the child and a statement of the reason he was taken into custody to the child's parent, guardian, or custodian unless the notice given under Section 52.02(b) of this code provided fair notice of the child's present whereabouts.

Sec. 53.02. Release from Detention

(a) If a child is brought before the court or delivered to a detention facility designated by the court, the intake or other authorized officer of the court shall immediately make an investigation and shall release the child unless it appears that his detention is warranted under Subsection (b) of this section. The release may be conditioned upon requirements reasonably necessary to insure the child's appearance at later proceedings, but the conditions of the release must be in writing and filed with the office or official designated by the court and a copy furnished to the child.

(b) A child taken into custody may be detained prior to hearing on the petition only if:

(1) he is likely to abscond or be removed from the jurisdiction of the court;

(2) suitable supervision, care, or protection for him is not being provided by a parent, guardian, custodian, or other person; or

(3) he has no parent, guardian, custodian, or other person able to return him to the court when required.

(c) If the child is not released, a request for detention hearing shall be made and promptly presented to the court, and an informal detention hearing as provided in Section 54.01 of this code shall be held promptly, but not later than the next working day after he was taken into custody.

Sec. 53.03. Intake Conference and Adjustment

(a) If the preliminary investigation required by Section 53.01 of this code results in a determination that further proceedings in the case are authorized and warranted, the probation officer or other designated officer of the court, subject to the direction of the juvenile court, may advise the parties for a reasonable period of time not to exceed six months concerning an informal adjustment and voluntary rehabilitation of a child if:

(1) advice without a court hearing would be in the interest of the public and the child;

(2) the child and his parent, guardian, or custodian consent with knowledge that consent is not obligatory; and

(3) the child and his parent, guardian, or custodian are informed that they may terminate the adjustment process at any point and petition the court for a court hearing in the case.

(b) Except as otherwise permitted by this title, the child may not be detained during or as a result of the adjustment process.

(c) An incriminating statement made by a participant to the person giving advice and in the discussions or conferences incident thereto may not be used against the declarant in any court hearing.

Sec. 53.04. Court Petition; Answer

(a) If the preliminary investigation, required by Section 53.01 of this code results in a determination that further proceedings are authorized and warranted, a petition for an adjudication or transfer hearing of a child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision may be made as promptly as practicable by a prosecuting attorney who has knowledge of the facts alleged or is informed and believes that they are true.

(b) The proceedings shall be styled "In the matter of ."

(c) The petition may be on information and belief.

(d) The petition must state:

(1) 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;

(2) the name, age, and residence address, if known, of the child who is the subject of the petition;

(3) the names and residence addresses, if known, of the parent, guardian, or custodian of the child and of the child's spouse, if any; and

(4) if the child's parent, guardian, or custodian does not reside or cannot be found in the state, or if their places of residence are unknown, the name and residence address of any known adult relative residing in the county or, if there is none, the name and residence address of the known adult relative residing nearest to the location of the court.

(e) An oral or written answer to the petition may be made at or before the commencement of the hearing. If there is no answer, a general denial of the alleged conduct is assumed.

Sec. 53.05. Time Set for Hearing

(a) After the petition has been filed, the juvenile court shall set a time for the hearing.

(b) The time set for the hearing shall not be later than 10 days after the day the petition was filed if:

(1) the child is in detention; or

(2) the child will be taken into custody under Section 53.06(d) of this code.

Sec. 53.06. Summons

(a) The juvenile court shall direct issuance of a summons to:

(1) the child named in the petition;

(2) the child's parent, guardian, or custodian;

(3) the child's guardian ad litem; and

(4) any other person who appears to the court to be a proper or necessary party to the proceeding.

(b) The summons must require the persons served to appear before the court at the time set to answer the allegations of the petition. A copy of the petition must accompany the summons.

(c) The court may endorse on the summons an order directing the parent, guardian, or custodian of the child to appear personally at the hearing and directing the person having the physical custody or control of the child to bring the child to the hearing. A person who violates an order entered under this subsection may be proceeded against under Section 54.07 of this code.

(d) If it appears from an affidavit filed or from sworn testimony before the court that immediate detention of the child is warranted under Section 53.02(b) of this code, the court may endorse on the summons an order that a law-enforcement officer shall serve the summons and shall immediately take the child into custody and bring him before the court.

(e) A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

Sec. 53.07. Service of Summons

(a) If a person to be served with a summons is in this state and can be found, the summons shall be served upon him personally at least two days before the day of the adjudication hearing. If he is in this state and cannot be found, but his address is known or can with reasonable diligence be ascertained, the summons may be served on him by mailing a copy by registered or certified mail, return receipt requested, at least five days before the day of the hearing. If he is outside this state but he can be found or his address is known, or his whereabouts or address can with reasonable diligence be ascertained, service of the summons may be made either by delivering a copy to him personally or mailing a copy to him by registered or certified mail, return receipt requested, at least five days before the day of the hearing.

(b) The juvenile court has jurisdiction of the case if after reasonable effort a person other than the child cannot be found nor his post-office address ascertained, whether he is in or outside this state.

(c) Service of the summons may be made by any suitable person under the direction of the court.

(d) The court may authorize payment from the general funds of the county of the costs of service and of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

(e) Witnesses may be subpoenaed in accordance with the Texas Code of Criminal Procedure, 1965.

CHAPTER 54. JUDICIAL PROCEEDINGS

Section

54.01. Detention Hearing.
54.02. Waiver of Jurisdiction and Discretionary Transfer to Criminal Court.
54.03. Adjudication Hearing.
54.04. Disposition Hearing.
54.05. Hearing to Modify Disposition.
54.06. Judgments for Support.
54.07. Enforcement of Order.
54.08. Public Access to Court Hearings.
54.09. Recording of Proceedings.

Sec. 54.01. Detention Hearing

(a) If the child is not released under Section 53.02 of this code, a detention hearing without a jury shall be held promptly, but not later than the second working day after he is taken into custody; provided, however, that when a child is detained on a Friday or Saturday, then such detention hearing shall be held on the first working day after the child is taken into custody.

(b) Reasonable notice of the detention hearing, either oral or written, shall be given, stating the time, place, and purpose of the hearing. Notice shall be given to the child and, if they can be found, to his parents, guardian, or custodian. Prior to the commencement of the hearing, the court shall inform the parties of the child's right to counsel and to appointed counsel if they are indigent and of the child's right to remain silent with respect to any allegations of delinquent conduct or conduct indicating a need for supervision.

(c) At the detention hearing, the court may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses. Prior to the detention hearing, the court shall provide the attorney for the child with access to all written matter to be considered by the court in making the detention decision. The court may order counsel not to reveal items to the child or his parent, guardian, or guardian ad litem if such disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future.

(d) A detention hearing may be held without the presence of the child's parents if the court has been unable to locate them. If no parent or guardian is present, the court shall appoint counsel or a guardian ad litem for the child.

(e) At the conclusion of the hearing, the court shall order the child released from detention unless it finds that:

(1) he is likely to abscond or be removed from the jurisdiction of the court;

(2) suitable supervision, care, or protection for him is not being provided by a parent, guardian, custodian, or other person; or

(3) he has no parent, guardian, custodian, or other person able to return him to the court when required.

(f) A release may be conditioned on requirements reasonably necessary to insure the child's appearance at later proceedings, but the conditions of the release must be in writing and a copy furnished to the child.

(g) No statement made by the child at the detention hearing shall be admissible against the child at any other hearing.

(h) A detention order extends to the conclusion of the disposition hearing, if there is one, but in no event for more than 10 days. Further detention orders may be made following subsequent detention hearings. Subsequent detention hearings may be waived in accordance with the requirements of Section 51.09 of this code, but each detention order shall extend for no more than 10 days.

(i) A child in custody may be detained for as long as 10 days without the hearing described in Subsection (a) of this section if:

(1) a written request for shelter in detention facilities pending arrangement of transportation to his place of residence in another state or country or another county of this state is voluntarily executed by the child not later than the next working day after he was taken into custody;

(2) the request for shelter contains:

(A) a statement by the child that he voluntarily agrees to submit himself to custody and detention for a period of not longer than 10 days without a detention hearing;

(B) an allegation by the person detaining the child that the child has left his place of residence in another state or country or another county of this state, that he is in need of shelter, and that an effort is being made to arrange transportation to his place of residence; and

(C) a statement by the person detaining the child that he has advised the child of his right to demand a detention hearing under Subsection (a) of this section; and

(3) the request is signed by the juvenile court judge to evidence his knowledge of the fact that the child is being held in detention.

(j) The request for shelter may be revoked by the child at any time, and on such revocation, if further detention is necessary, a detention hearing shall be held not later than the next working day in accordance with Subsections (a) through (g) of this section.

(k) Notwithstanding anything in this title to the contrary, the child may sign a request for shelter without the concurrence of an adult specified in Section 51.09 of this code.

(l) The juvenile board or, if there is none, the juvenile court, may appoint a referee to conduct the detention hearing. The referee shall be an attorney licensed to practice law in this state. Such payment or additional payment as may be warranted for referee services shall be provided from county funds. Before commencing the detention hearing, the referee shall inform the parties who have appeared that they are entitled to have the hearing before the juvenile court judge or a substitute judge authorized by Section 51.04(f) of this code. If a party objects to the referee conducting the detention hearing, an authorized judge shall conduct the hearing within 24 hours. At the conclusion of the hearing, the referee shall transmit written findings and recommendations to the juvenile court judge or substitute judge. The juvenile court judge or substitute judge shall adopt, modify, or reject the referee's recommendations within 24 hours. Failure to act within that time results in release of the child by operation of law. A recommendation that the child be released operates to secure his immediate release, subject to the power of the juvenile court judge or substitute judge to reject or modify that recommendation. The effect of an order detaining a child shall be computed from the time of the hearing before the referee.

(m) The detention hearing required in this section may be held in the county of the designated place of detention where the child is being held even though the designated place of detention is outside the county of residence of the child or the county in which the alleged delinquent conduct or conduct indicating a need for supervision occurred.

Sec. 54.02. Waiver of Jurisdiction and Discretionary Transfer to Criminal Court

(a) The juvenile court may waive its exclusive original jurisdiction and transfer a child to the appropriate district court or criminal district court for criminal proceedings if:

(1) the child is alleged to have violated a penal law of the grade of felony;

(2) the child was 15 years of age or older at the time he is alleged to have committed the offense and no adjudication hearing has been conducted concerning that offense; and

(3) after full investigation and hearing the juvenile court determines that because of the seriousness of the offense or the background of the child the welfare of the community requires criminal proceedings.

(b) The petition and notice requirements of Sections 53.04, 53.05, 53.06, and 53.07 of this code must be satisfied, and the summons must state that the hearing is for the purpose of considering discretionary transfer to criminal court.

(c) The juvenile court shall conduct a hearing without a jury to consider transfer of the child for criminal proceedings.

(d) Prior to the hearing, the juvenile court shall order and obtain a complete diagnostic study, social evaluation, and full investigation of the child, his circumstances, and the circumstances of the alleged offense.

(e) At the transfer hearing the court may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses. At least one day prior to the transfer hearing, the court shall provide the attorney for the child with access to all written matter to be considered by the court in making the transfer decision. The court may order counsel not to reveal items to the child or his parent, guardian, or guardian ad litem if such disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future.

(f) In making the determination required by Subsection (a) of this section, the court shall consider, among other matters:

(1) whether the alleged offense was against person or property, with greater weight in favor of transfer given to offenses against the person;

(2) whether the alleged offense was committed in an aggressive and premeditated manner;

(3) whether there is evidence on which a grand jury may be expected to return an indictment;

(4) the sophistication and maturity of the child;

(5) the record and previous history of the child; and

(6) the prospects of adequate protection of the public and the likelihood of the rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court.

(g) If the juvenile court retains jurisdiction, the child is not subject to criminal prosecution at any time for any offense alleged in the petition or for any offense within the knowledge of the juvenile court judge as evidenced by anything in the record of the proceedings.

(h) If the juvenile court waives jurisdiction, it shall state specifically in the order its reasons for waiver and certify its action, including the written order and findings of the court, and transfer the child to the appropriate court for criminal proceedings. On transfer of the child for criminal proceedings, he shall be dealt with as an adult and in accordance with the Texas Code of Criminal Procedure, 1965. The transfer of custody is an arrest. The examining trial shall be conducted by the court to which the case was transferred, which may remand the child to the jurisdiction of the juvenile court.

(i) If the child's case is brought to the attention of the grand jury and the grand jury does not indict for the offense charged in the complaint forwarded by the juvenile court, the district court or criminal district court shall certify the grand jury's failure to indict to the juvenile court. On receipt of the certification, the juvenile court may resume jurisdiction of the case.

(j) The juvenile court may waive its exclusive original jurisdiction and transfer a person to the appropriate district court or criminal district court for criminal proceedings if:

(1) the person is 18 years of age or older;

(2) the person was 15 years of age or older and under 17 years of age at the time he is alleged to have committed a felony;

(3) no adjudication concerning the alleged offense has been made or no adjudication hearing concerning the offense has been conducted; and

(4) the juvenile court finds from a preponderance of the evidence that after due diligence of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person because:

(A) the state did not have probable cause to proceed in juvenile court and new evidence has been found since the 18th birthday of the person; or

(B) the person could not be found.

(k) The petition and notice requirements of Sections 53.04, 53.05, 53.06, and 53.07 of this code must be satisfied, and the summons must state that the hearing is for the purpose of considering waiver of jurisdiction under Subsection (j) of this section.

(l) The juvenile court shall conduct a hearing without a jury to consider waiver of jurisdiction under Subsection (j) of this section.

Sec. 54.03. Adjudication Hearing

(a) A child may be found to have engaged in delinquent conduct or conduct indicating a need for supervision only after an adjudication hearing conducted in accordance with the provisions of this section.

(b) At the beginning of the adjudication hearing, the juvenile court judge shall explain to the child and his parent, guardian, or guardian ad litem:

(1) the allegations made against the child;
(2) the nature and possible consequences of the proceedings;
(3) the child's privilege against self-incrimination;
(4) the child's right to trial and to confrontation of witnesses;
(5) the child's right to representation by an attorney if he is not already represented; and
(6) the child's right to trial by jury.

(c) Trial shall be by jury unless jury is waived in accordance with Section 51.09 of this code. Jury verdicts under this title must be unanimous.

(d) Only material, relevant, and competent evidence in accordance with the requirements for the trial of civil cases may be considered in the adjudication hearing. Except in a detention or discretionary transfer hearing, a social history report or social service file shall not be viewed by the court before the adjudication decision and shall not be viewed by the jury at any time.

(e) A child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision need not be a witness against nor otherwise incriminate himself. An extrajudicial statement which was obtained without fulfilling the requirements of this title or of the constitution of this state or the United States, may not be used in an adjudication hearing. A statement made by the child out of court is insufficient to support a finding of delinquent conduct or conduct indicating a need for supervision unless it is corroborated in whole or in part by other evidence. Evidence illegally seized or obtained is inadmissible in an adjudication hearing.

(f) At the conclusion of the adjudication hearing, the court or jury shall find whether or not the child has engaged in delinquent conduct or conduct indicating a need for supervision. The finding must be based on competent evidence admitted at the hearing. The child shall be presumed to be innocent of the charges against him and no finding that a child has engaged in delinquent conduct or conduct indicating a need for supervision may be returned unless the state has proved such beyond a reasonable doubt. In all jury cases the jury will be instructed that the burden is on the state to prove that a child has engaged in delinquent conduct or is in need of supervision beyond a reasonable doubt.

(g) If the court or jury finds that the child did not engage in delinquent conduct or conduct indicating a need for supervision, the court shall dismiss the case with prejudice.

(h) If the finding is that the child did engage in delinquent conduct or conduct indicating a need for supervision, the court or jury shall state which of the allegations in the petition were found to be established by the evidence. The court shall also set a date and time for the disposition hearing.

Sec. 54.04. Disposition Hearing

"(a) The disposition hearing shall be separate, distinct, and subsequent to the adjudication hearing. There is no right to a jury at the disposition hearing.

(b) At the disposition hearing, the juvenile court may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses. Prior to the disposition hearing, the court shall provide the attorney for the child with access to all written matter to be considered by the court in disposition. The court may order counsel not to reveal items to the child or his parent, guardian, or guardian ad litem if such disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future.

(c) No disposition may be made under this section unless the court finds that the child is in need of rehabilitation or that the protection of the public or the child requires that disposition be made. If the court does not so find, it shall dismiss the child and enter a final judgment without any disposition.

(d) If the court makes the finding specified in Subsection (c) of this section, it may:

(1) place the child on probation on such reasonable and lawful terms as the court may determine for a period not to exceed one year, subject to extensions not to exceed one year each:
(A) in his own home or in the custody of a relative or other fit person;
(B) in a suitable foster home; or
(C) in a suitable public or private institution or agency, except the Texas Youth Council; or

(2) if the court or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct, the court may commit the child to the Texas Youth Council.

(e) The Texas Youth Council shall accept a child properly committed to it by a juvenile court even though the child may be 17 years of age or older at the time of commitment.

(f) The court shall state specifically in the order its reasons for the disposition and shall furnish a copy of the order to the child. If the child is placed on probation, the terms of probation shall be written in the order.

(h) At the conclusion of the dispositional hearing, the court shall inform the child of his right to appeal, as required by Section 56.01 of this code.

"Sec. 54.041. Order Prohibiting Harmful Contacts

"When a child has been found to have engaged in delinquent conduct or conduct indicating a need for supervision and the juvenile court has made a finding that the child is in need of rehabilitation or that the protection of the public or the child requires that disposition be made, the juvenile court, on notice to all persons affected and on hearing, may enjoin all contact between the child and a person who is found to be a contributing cause of the child's delinquent conduct or conduct indicating a need for supervision."

Sec. 54.05. Hearing to Modify Disposition

"(a) Any disposition, except a commitment to the Texas Youth Council, may be modified by the juvenile court as provided in this section until:

(1) the child reaches his 18th birthday; or

(2) the child is earlier discharged by the court or operation of law.

(b) All dispositions automatically terminate when the child reaches his 18th birthday.

"(c) There is no right to a jury at a hearing to modify disposition.

(d) A hearing to modify disposition shall be held on the petition of the child and his parent, guardian, guardian ad litem, or attorney, or on the petition of the state, a probation officer, or the court itself. Reasonable notice of a hearing to modify disposition shall be given to all parties.

(e) At the hearing to modify disposition, the court may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses. Prior to the hearing to modify disposition, the court shall provide the attorney for the child with access to all written matter to be considered by the court in deciding whether to modify disposition. The court may order counsel not to reveal items to the child or his parent, guardian, or guardian ad li-

tem if such disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future.

(f) A disposition based on a finding that the child engaged in delinquent conduct may be modified so as to commit the child to the Texas Youth Council if the court after a hearing to modify disposition finds beyond a reasonable doubt that the child violated a reasonable and lawful order of the court.

(g) A disposition based solely on a finding that the child engaged in conduct indicating a need for supervision may not be modified to commit the child to the Texas Youth Council. A new finding in compliance with Section 54.03 of this code must be made that the child engaged in delinquent conduct as defined in Section 51.03(a) of this code.

(h) A hearing shall be held prior to commitment to the Texas Youth Council as a modified disposition. In other disposition modifications, the child and his parent, guardian, guardian ad litem, or attorney may waive hearing in accordance with Section 51.09 of this code.

(i) The court shall specifically state in the order its reasons for modifying the disposition and shall furnish a copy of the order to the child.

Sec. 54.06. Judgments for Support

(a) 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, 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.

(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 Council.

Sec. 54.07. Enforcement of Order

(a) Any order of the juvenile court may be enforced by contempt.

(b) The juvenile court may enforce its order for support by civil contempt proceedings after 10 days' notice to the defaulting person of his failure or refusal to carry out the terms of the order.

(c) On the motion of any person or agency entitled to receive payments for the benefit of a child, the juvenile court may render judgment against a defaulting person for any amount unpaid and owing after 10 days' notice to the defaulting person of his failure or refusal to carry out the terms of the order. The judgment may be enforced by any means available for the enforcement of judgments for other debts.

Sec. 54.08. Public Access to Court Hearings

The general public may be excluded from hearings under this title. The court in its discretion may admit such members of the general public as it deems proper.

Sec. 54.09. Recording of Proceedings

All judicial proceedings under this chapter except detention hearings shall be recorded by stenographic notes or by electronic, mechanical, or other appropriate means. Upon request of any party, a detention hearing shall be recorded.

Sec. 54.10. Hearings Before Referee

(a) The hearing provided in Sections 54.01, 54.03, and 54.04 of this code may be held by a referee appointed in accordance with Section 51.04 (g) of this code provided:

(1) the parties have been informed by the referee that they are entitled to have the hearing before the juvenile court judge or in the case of a detention hearing provided for in Section 54.01 of this code, a substitute judge as authorized by Section 51.04(f) of this code; or

(2) the child and the attorney for the child have in accordance with the requirements of Section 51.09 of this code waived the right to have the hearing before the juvenile court judge or substitute judge.

(b) At the conclusion of the hearing, the referee shall transmit written findings and recommendations to the juvenile court judge. The juvenile court judge shall adopt, modify, or reject the referee's recommendations within 24 hours. In the same case of a detention hearing as authorized by Section 54.01 of this code, the failure of the juvenile court to act within 24 hours results in release of the child by operation of law and a recommendation that the child be released operates to secure his immediate release subject to the power of the juvenile court judge to modify or reject that recommendation.

CHAPTER 55. PROCEEDINGS CONCERNING CHILDREN WITH MENTAL ILLNESS, RETARDATION, DISEASE, OR DEFECT

Section

55.01. Physical or Mental Examination.
55.02. Mentally Ill Child.
55.03. Mentally Retarded Child.
55.04. Mental Disease or Defect Excluding Fitness to Proceed.
55.05. Mental Disease or Defect Excluding Responsibility.

Sec. 55.01. Physical or Mental Examination

At any stage of proceedings under this title, the juvenile court may cause the child to be examined by a physician, psychiatrist, or psychologist.

Sec. 55.02. Mentally Ill Child

(a) If it appears to the juvenile court, on suggestion of a party or on the court's own notice, that a child alleged by petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision may be mentally ill, the court shall initiate proceedings to order temporary hospitalization of the child for observation and treatment.

(b) The Texas Mental Health Code (5547–1 et seq., Vernon's Texas Civil Statutes) governs proceedings for temporary hospitalization except that the juvenile court shall conduct the proceedings whether or not the juvenile court is also a county court.

(c) If the juvenile court enters an order of temporary hospitalization of the child, the child shall be cared for, treated, and released in conformity to the Texas Mental Health Code except:

(1) a juvenile court order of temporary hospitalization of a child automatically expires when the child becomes 18 years of age;

(2) the head of a mental hospital shall notify the juvenile court that ordered temporary hospitalization at least 10 days prior to discharge of the child; and

(3) appeal from juvenile court proceedings under this section shall be to the court of civil appeals as in other proceedings under this title.

(d) If the juvenile court orders temporary hospitalization of a child, the proceedings under this title then pending in juvenile court shall be stayed.

(e) If the child is discharged from the mental hospital before reaching 18 years of age, the juvenile court may:

(1) dismiss the juvenile court proceedings with prejudice; or

(2) continue with proceedings under this title as though no order of temporary hospitalization had been made.

Sec. 55.03. Mentally Retarded Child

(a) If it appears to the juvenile court, on the suggestion of a party or on the court's own notice, that a child alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision may be mentally retarded, the court shall initiate proceedings to order commitment of the child to a facility for the care and treatment of mentally retarded persons.

(b) The Mentally Retarded Persons Act (Article 3871b, Vernon's Texas Civil Statutes) governs proceedings for commitment of a mentally retarded child except that the juvenile court shall conduct the proceedings whether or not the juvenile court is also a county court.

(c) If the juvenile court enters an order committing the child for care and treatment in a facility for mentally retarded persons, the child shall be cared for, treated, and released in conformity to the Mentally Retarded Persons Act except:

(1) the juvenile court that ordered commitment of the child shall be notified at least 10 days prior to discharge of the child; and

(2) appeal from juvenile court proceedings under this section shall be to the court of civil appeals as in other proceedings under this title.

(d) If the juvenile court orders commitment of a child to a facility for the care and treatment of mentally retarded persons, the proceedings under this title then pending in juvenile court shall be stayed.

(e) If the child is discharged from the facility for the care and treatment of mentally retarded persons before reaching 18 years of age, the juvenile court may:

(1) dismiss the juvenile court proceedings with prejudice; or

(2) continue with proceedings under this title as though no order of commitment had been made.

Sec. 55.04. Mental Disease or Defect Excluding Fitness to Proceed

(a) No child who as a result of mental disease or defect lacks capacity to understand the proceedings in juvenile court or to assist in his own defense shall be subjected to discretionary transfer to criminal court, adjudication, disposition, or modification of disposition as long as such incapacity endures.

(b) If it appears to the juvenile court, on suggestion of a party or on the court's own notice, that a child alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision may be unfit to proceed, the court shall order appropriate medical and psychiatric inquiry to assist in determining whether the child is unfit to proceed because of mental disease or defect.

(c) The court or jury shall determine from the psychiatric and other evidence at a hearing separate from, but conducted in accordance with the requirements for, the adjudication hearing whether the child is fit or unfit to proceed.

(d) Unfitness to proceed must be proved by a preponderance of the evidence.

(e) If the court or jury determines that the child is fit to proceed, the juvenile court shall continue with proceedings under this title as though no question of fitness to proceed had been raised.

(f) If the court or jury determines that the child is unfit to proceed, the court or jury shall determine whether the child should be committed for a period of temporary hospitalization for observation and treatment in accordance with Section 55.02 of this code or committed to a facility for mentally retarded persons for care and treatment in accordance with Section 55.03 of this code.

(g) Proceedings to determine fitness to proceed may be joined with proceedings under §§ 55.02 and 55.03 of this code.

(h) The fact that the child is unfit to proceed does not preclude any legal objection to the juvenile court proceedings which is susceptible of fair determination prior to the adjudication hearing and without the personal participation of the child.

Sec. 55.05. Mental Disease or Defect Excluding Responsibility

"(a) A child is not responsible for delinquent conduct or conduct indicating a need for supervision if at the time of such conduct, as a result of mental disease or defect, he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

(b) If it appears to the juvenile court, on suggestion of a party or on the court's own notice, that a child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision may not be responsible as a result of mental disease or defect, the court shall order appropriate medical and psychiatric inquiry to assist in determining whether the child is or is not responsible.

(c) The issue of whether the child is not responsible for his conduct as a result of mental disease or defect shall be tried to the court or jury in the adjudication hearing.

(d) Mental disease or defect excluding responsibility must be proved by a preponderance of the evidence.

(e) In its findings or verdict the court or jury must state whether the child is not responsible for his conduct as a result of mental disease or defect.

(f) If the court or jury finds the child responsible for his conduct the proceedings shall continue as though no question of mental disease or defect excluding responsibility had been raised.

(g) If the court or jury finds that the child is not responsible for his conduct as a result of mental disease or defect, the court shall dismiss the proceedings with prejudice, and the court shall initiate proceedings under Section 55.02 or 55.03 of this code to determine whether the child should be committed for care and treatment as a mentally ill or mentally retarded child.

(h) A child declared not responsible for his conduct because of mental disease or defect shall not thereafter be subject to proceedings under this title with respect to such conduct, other than proceedings under Section 55.02 or 55.03 of this code.

CHAPTER 56. APPEAL

Section
56.01. Right to Appeal.
56.02. Transcript on Appeal.

Sec. 56.01. Right to Appeal

(a) An appeal from an order of a juvenile court is to the Texas Court of Civil Appeals and the case may be carried to the Texas Supreme Court by writ of error or upon certificate, as in civil cases generally.

(b) The requirements governing an appeal are as in civil cases generally.

(c) An appeal may be taken by or on behalf of the child from:

(1) an order entered under Section 54.02 of this code respecting transfer of the child to criminal court for prosecution as an adult;

(2) an order entered under Section 54.03 of this code with regard to delinquent conduct or conduct indicating a need for supervision;

(3) an order entered under Section 54.04 of this code disposing of the case;

(4) an order entered under Section 54.05 of this code respecting modification of a previous juvenile court disposition; or

(5) an order entered under Chapter 55 of this code committing a child to a facility for the mentally ill or mentally retarded.

(d) Notice of appeal shall be given to the juvenile court as in civil cases generally.

(e) On entry of an order that is appealable under this section, the court shall instruct the attorney to advise the child and his parent, guardian, or guardian ad litem of the child's right to appeal, of the child's right to representation by counsel on appeal, and of the child's right to appointment of an attorney for appeal if an attorney cannot be obtained because of indigency. If the child and his parent, guardian, or guardian ad litem express a desire to appeal, the attorney shall file a notice of appeal with the juvenile court and inform the court whether or not he will handle the appeal.

(f) On entering an order that is appealable under this section, the juvenile court, if the child is not represented by an attorney, shall give notice to the child and his parent, guardian, or guardian ad litem of the child's right to appeal, of the child's right to representation by counsel on appeal, and of the child's right to appointment of an attorney for appeal if an attorney cannot be obtained because of indigency. Counsel shall be appointed under the standards provided in Section 51.10 of this code unless the right to appeal is waived in accordance with Section 51.09 of this code.

(g) An appeal does not suspend the order of the juvenile court, nor does it release the child from the custody of that court or of the person, institution, or agency to whose care the child is committed, unless the juvenile court so orders. However, the appellate court may provide for a personal bond.

(h) If the order appealed from takes custody of the child from his parent, guardian, or custodian, the appeal has precedence over all other cases.

(i) The appellate court may affirm, reverse, or modify the judgment or order, including an order of disposition or modified disposition, from which appeal was taken. It may reverse or modify an order of disposition or modified order of disposition while affirming the juvenile court adjudication that the child engaged in delinquent conduct or conduct indicating a need for supervision.

(j) Neither the child nor his family shall be identified in an appellate opinion rendered in an appeal or habeas corpus proceedings related to juvenile court proceedings under this title. The appellate opinion shall be styled, "In the matter of ," identifying the child by his initials only.

Sec. 56.02. Transcript on appeal

(a) The attorney representing a child on appeal who desires to have included in the record on appeal a transcription of notes of the reporter has the responsibility of obtaining and paying for the transcription and furnishing it to the clerk in duplicate in time for inclusion in the record.

(b) The juvenile court shall order the reporter to furnish a transcription without charge to the attorney if the court finds, after hearing or on an affidavit filed by the child's parent or other person responsible for support of the child that he is unable to pay or to give security therefor.

(c) On certificate of the court that this service has been rendered, payment therefor shall be made from the general funds of the county in which the proceedings appealed from occurred.

(d) The court reporter shall report any portion of the proceedings requested by either party or directed by the court and shall report the proceedings in question and answer form unless a narrative transcript is requested.

Art. 5143d. Texas Youth Council

Purpose

Section 1. The purpose of this Act is to create a Texas Youth Council to administer the state's correctional facilities for delinquent children, to provide a program of constructive training aimed at rehabilitation and reestablishment in society of children adjudged delinquent by the courts of this state and committed to the Texas Youth Council, and to provide active parole supervision of such delinquent children until officially discharged from custody of the Texas Youth Council. It is the further purpose of this Act to delegate to the Texas Youth Council the supervision of the Corsicana State Home (State Orphan Home), the Texas Blind, Deaf and Orphan School, and the Waco State Home.

Construction of the Act

Sec. 2. This Act shall be liberally construed to accomplish the purpose herein sought.

Corsicana State Home; Change of Name

Sec. 2a. The name of the State Orphan Home, located at Corsicana, Texas, is hereby changed and shall hereafter be known and designated as the Corsicana State Home.

Definitions

Sec. 3. As used in this Act:

(a) "Texas Youth Council" or "Youth Council" means the Texas Youth Council as provided in this Act.

(b) "Chairman" means the Chairman of the Texas Youth Council.

(c) "Executive Director" means the Executive Director of the Texas Youth Council appointed and employed by said Youth Council.

(d) "Delinquent Child" means any male or female so adjudged under provisions of Sections 3 and 13 of Chapter 204 of the General Laws of the Regular Session of the 48th Legislature, 1943. (Sections 3 and 13, Article 2338–1, codified in Vernon's Civil Statutes, 1948.)

(e) "Court" means the Juvenile Court.

Texas Youth Council Established

Sec. 1.

(a) There is hereby created a Texas Youth Council to consist of six (6) members to be appointed by the Governor with the consent of the Senate. Members of the Texas Youth Council shall be citizens in their respective communities who are recognized for their interest in youth.

(b) The term of office of members of the Texas Youth Council shall be six (6) years. Members shall be eligible for reappointment. A vacancy for an unexpired term shall be filled by the Governor with the consent of the Senate. Members of the Youth Council shall each receive a per diem of Thirty-five Dollars ($35.00) for not exceeding ninety (90) days for any fiscal year.

(c) All members of the Texas Youth Council and the Executive Director appointed by them shall receive as expenses the actual expense incurred while on state business for the Texas Youth Council.

(d) The Texas Youth Council shall hold meetings at the call of its Chairman, selected or elected by it, or at the request of four (4) members at such times and places as its Chairman may determine, but it shall not hold less than four (4) meetings annually.

(e) The Texas Youth Council shall have its office wherever the Youth Council chooses, in such building as shall be designated and approved by the State Board of Control.

(f) The Texas Youth Council shall assume the administrative control, supervision, direction and operation of all facilities, institutions, training of state wards and parole supervision of state wards now under the control of the State Youth Development Council and shall further assume the administrative control and supervision of the Corsicana State Home, the Texas Blind, Deaf and Orphan School, and the Waco State Home.

(g) An Executive Director shall be employed by the Texas Youth Council to serve at the pleasure of said Texas Youth Council and shall perform such duties as shall be designated by the Texas Youth Council. Said Executive Director shall devote full time to the work of the Texas Youth Council.

Organization, Powers and Responsibilities of the Texas Youth Council

Sec. 5. (a) A member of the Texas Youth Council shall be appointed or elected as Chairman and he shall preside over all meetings of said Youth Council.

(b) The Texas Youth Council shall be responsible for the adoption of all policies and shall make all rules appropriate to the proper accomplishment of its functions.

(c) The powers and duties formerly held by the State Youth Development Council in respect to the custody, training, treatment, parole, transfer, release under supervision and discharge of delinquent children committed to the state shall be exercised and performed by the Texas Youth Council and may be delegated to the Executive Director. The Executive Director may delegate the powers and duties vested in him in this subsection to any employee of the Texas Youth Council or employee designated by the Texas Youth Council to assume such duties or powers.

(d) All powers, duties and functions other than those specified in subsection (c), granted or imposed on the Texas Youth Council by any provision of law, may be exercised and performed by the Executive Director or any member or employee designated or assigned by the Texas Youth Council or by the Executive Director.

(e) For the exercise of other functions than those specified in subsection (c), four (4) members of the Texas Youth Council shall constitute a quorum.

Major Duties and Functions of the Texas Youth Council

Sec. 6. The Texas Youth Council shall:

(a) Carry on a continuing study of the problem of juvenile delinquency in this state and seek to focus public attention on special solutions to this problem;

(b) Cooperate with all existing agencies and encourage the establishment of new agencies, both local and statewide, if their object is services to delinquent and pre-delinquent youth of this state;

(c) Assist local authorities of any county or municipality when requested by the governing body thereof in the developing, strengthening and coordination of educational, welfare, health, recreational or law enforcement programs which have as their object the prevention of juvenile delinquency and crime;

(d) Administer the diagnostic treatment and training and supervisory facilities and services of the state for delinquent children committed to the state. Manage and direct state training school facilities and provide for the coordination and combination of such facilities, as deemed advisable by the Texas Youth Council, and for the creation of new facilities within the total appropriation provided by the Legislature; exercise administrative control and supervision over all other institutions and facilities under its jurisdiction;

(e) (1) Assist local communities by providing services and funding for programs for the pre-delinquent and delinquent through contracts with local public and private nonprofit entities which volunteer for such assistance when funds are available for the purpose. Such assistance shall be granted under the following terms and conditions:

(A) Rules and Regulations of the Texas Youth Council. (i) The Texas Youth Council shall prescribe such rules, regulations, priorities, and standards, not inconsistent with the Constitution and laws of this state, as it considers necessary and appropriate to insure adequate services by the local entity rendering the service.

(ii) Before any rule, regulation, or standard is adopted the Texas Youth Council shall give notice and opportunity to interested persons to participate in the rule making.

(iii) The rules, regulations, and standards adopted by the Texas Youth Council under this section shall be filed with the Secretary of State and shall be published and available on request from the Secretary of State.

(B) Application by Local Entity for Assistance. Any local entity providing, or planning to provide, services to or programs for the predelinquent or delinquent may request assistance under this section by making an application to the Texas Youth Council in accordance with the rules and regulations promulgated by the Texas Youth Council.

(C) Service or Program Must be Part of Plan. Each request for local assistance must be consistent with the statewide plans of the Texas Youth Council. Such plans shall be designed to meet the needs and priorities of the various geographical areas of the state.

(D) Programs and Services to be Audited. All services and programs funded by authority of this subsection shall be monitored and evaluated fiscally and programmatically by the Texas Youth Council to assure cost and program effectiveness.

(E) Local Match. The Texas Youth Council may require that state funding of local services or programs be matched by local support in such proportions and amounts as may be determined by the Texas Youth Council.

(F) Funding Suspended on Default. The Texas Youth Council shall suspend payment of any contract previously approved if the local entity fails to follow an approved program or diverts the use of any contract funds to a purpose other than that authorized by this subsection.

(2) The Texas Youth Council may provide the services or programs in accordance with the plan referred to in Paragraph (i)(C) above to the extent that local communities fail to provide such services or programs.

(f) Before each convening date of the Regular Session of the Legislature, make a report to the Governor and Legislature of its activities and accomplishments and of its findings as to its major needs relative to the handling of the children committed to it by courts of the state. The report shall include specific recommendations for legislation, planned and drafted as part of an integrated, unified and consistent program to serve the best interest of the state and the youth committed to the Texas Youth Council; and recommendations for the repeal of any conflicting, obsolete or otherwise undesirable legislation affecting youth.

Cooperation by Other Departments

Sec. 7. To effectuate the purpose of this Act and to make maximum use of existing facilities and personnel, it shall be the duty of all departments and agencies of the state government and of all officers and employees of the state, when requested by the Texas Youth Council, to cooperate with it in all activities consistent with their proper function.

Transfer of Facilities

Sec. 8. The Texas Youth Council shall succeed to and be vested with all rights, powers, duties, facilities, personnel, records and appropriations, relating to the care, custody, and control of children, now held by (a) the State Youth Development Council, including the Gatesville State School for Boys, the Gainesville State School for Girls, and the Crockett State School for Negro Girls; (b) the Board

for Texas State Hospitals and Special Schools in respect to the Corsicana State Home and Texas Blind, Deaf and Orphan Home; and (c) the Department of Public Welfare with respect to the Waco State Home.

Employees

Sec. 9. In addition to those employees transferred to the Texas Youth Council by Section 8 of this Act, the Youth Council may employ at compensation provided by the Legislature and within the limits of the amounts appropriated therefor, such medical, psychiatric, and other expert personnel, parole officers, supervisory, institutional, clerical and other employees as are necessary to discharge its duties. The Youth Council shall have the power to remove any employee for cause, and the decision of the Youth Council in such removals shall be final. The superintendents of the schools under the jurisdiction of the Texas Youth Council shall have the right to dismiss school employees with the approval of the Executive Director.

Admission of Children

Sec. 9a. Subject to such policies as the Texas Youth Council may adopt, the Corsicana State Home, the West Texas Children's Home at Pyote, and the Waco State Home may accept for admission any child between the ages of three (3) years and eighteen (18) years who is a full orphan, a half-orphan, or a dependent and neglected child, and may offer, if needed, care, treatment, education, and training to such children as are admitted thereto until they have reached the age of twenty-one (21) years.

Power to Accept Gifts

Sec. 10. The Youth Council may accept gifts, grants, or donations of money or of property from private sources to effectuate the purpose of this Act. Any and all funds so donated shall be placed in the State Treasury in a special fund called the Texas Youth Council Fund and expended in the same manner as other state moneys are expended, upon warrants drawn by the Comptroller upon the order of the Youth Council. Any of said moneys are hereby appropriated for the purpose of carrying out this Act, and any moneys in the Youth Development Fund are hereby transferred to the Texas Youth Council Fund.

Referrals from Federal Court

Sec. 11. The Texas Youth Council shall have the power to enter into agreements with the federal government to accept children from the Federal Court for compensation upon which they agree.

Commitments by Juvenile Courts

Sec. 12. (a) When a child is found to have engaged in delinquent conduct as provided in Title 3, Family Code, and the juvenile court does not release such child unconditionally, or place him on probation or in a suitable public or private institution or agency other than a state training school, the juvenile court shall commit the child to the Texas Youth Council, but may suspend the execution of the order of such commitment.

(b) A child committed to the Texas Youth Council by a juvenile court pursuant to a finding that the child violated a reasonable and lawful order of a court entered upon a finding that the child engaged in conduct indicating a need for supervision under Subdivision (2) or (3), Subsection (b), Section 51.03, Family Code, shall be placed by the Texas Youth Council in the Corsicana State Home, West Texas Children's Home in Pyote, Waco State Home, or such other home as may be established for the care of children, but such child may not be placed with children found to have engaged in delinquent conduct pursuant to any other provision of Title 3, Family Code.

(c) A child being kept by the Texas Youth Council at a facility in violation of this section shall be released upon habeas corpus.

Preliminary Disposition by Court

Sec. 13. (a) When the court commits a delinquent child to the Youth Council, it may order him conveyed forthwith to some place of detention approved, or established, or designated by the Youth Council, or may direct that he be left at liberty until otherwise ordered by the Youth Council under such conditions as will insure his submission to any orders of the Youth Council.

(b) The court shall assign an officer or other suitable person to convey such a child to any facility designated by the Youth Council, provided that the person assigned to convey a girl must be a woman. The cost of conveying any such child committed to the Youth Council shall be paid by the county from which said child is committed, provided that no compensation shall be allowed beyond the actual and necessary expenses of the party conveying and the child conveyed.

Effect of Appeal from Adjudication or Commitment

Sec. 14. The right of a child who has been adjudged delinquent to appeal from the adjudication or from the order of commitment shall not be affected by anything in this Act.

Notification and Duty to Furnish Information

Sec. 15. When a court commits a child to the Youth Council as a delinquent child, such court shall at once forward to the Youth Council a certified copy of the order of commitment, and the court, the probation officer, the prosecuting and police authorities, the school authorities, and other public officials shall make available to the Youth Council all pertinent information in their possession in respect to the case. The reports required by this section shall, if the Youth Council so requests, be made upon forms furnished by the Youth Council or according to an outline furnished by it.

Diagnosis of Committed Children

Sec. 16. (a) When a delinquent child has been committed to the Youth Council, it shall, under rules established by it, forthwith examine and study him and investigate all pertinent circumstances of his life and behavior.

(b) The Youth Council shall make periodic re-examination of all such children within its control, except those on release under supervision or in foster homes. These examinations may be made as frequently as the Youth Council considers desirable, and shall be made with respect to every child at intervals not exceeding one (1) year.

(c) The Youth Council shall keep written records of all examinations and of the conclusions based thereon, and of all orders concerning the disposition or treatment of every delinquent child subject to its control. All records maintained by such Youth Council shall not be public records, but shall only be available upon the order of a District Court.

(d) Failure of the Youth Council to examine a delinquent child committed to it, or to re-examine him within one (1) year of a previous examination, shall not of itself entitle the child to discharge from the control of the Youth Council, but shall entitle him to petition the committing court for an order of discharge, and the court shall discharge him unless the Youth Council upon due notice satisfies the court of the necessity for further control.

Determination of Treatment

Sec. 17. When a child has been committed to the Youth Council as a delinquent child, the Council may:

(a) Permit him his liberty under supervision and upon such conditions it believes conducive to acceptable behavior; or

(b) Order his confinement under such conditions as it believes best designed for his welfare and the interest of the public; or

(c) Order reconfinement or renewed release as often as conditions indicate to be desirable; or

(d) Revoke or modify any order of the Council affecting a child, except an order of final discharge, as often as conditions indicate to be desirable; or

(e) Discharge him from control when it is satisfied that such discharge will best serve his welfare and the protection of the public.

Type of Treatment Permitted

Sec. 18. As a means of correcting the socially harmful tendencies of a delinquent child committed to it, the Youth Council may:

(a) Require participation by him in moral, academic, vocational, physical and correctional training and activities;

(b) Require such modes of life and conduct as may seem best adapted to fit him for return to full liberty without danger to the public;

(c) Provide such medical or psychiatric treatment as is necessary;

(d) Place boys who are physically fit in parts-maintenance camps or forestry camps or boys' ranches owned by the state or by the United States and require boys so housed to perform suitable conservation and maintenance work; provided that the boys shall not be exploited and that the dominant purpose of such activities shall be to benefit and rehabilitate the boys rather than to make the camps self-sustaining.

State Schools and Other Facilities

Sec. 19. The Youth Council shall have the management, government and care of the Gatesville State School for Boys, the Gainesville State School for Girls, the Crockett State School for Negro Girls, and of all other facilities hereafter established by the state for the custody, diagnosis, care, training and parole supervision of delinquent children committed to the state.

Appointment of Superintendents and Employees

Sec. 20. The Youth Council shall, from time to time, appoint a superintendent for each of said schools and institutions, and upon the recommendation of the superintendent shall appoint all other officials, chaplains, teachers, and employees required at said schools and institutions and shall prescribe their duties. The superintendent of any school or other facility for the care of girls exclusively shall be a woman. The superintendent, with the consent of the Executive Director, may discharge any employee for cause.

The salaries, compensation, and emoluments of the superintendents and subordinate officials, teachers, and employees shall be fixed as provided by the Legislature.

Rules and Purposes of Schools and Other Facilities

Sec. 21. The Youth Council shall establish rules and regulations for the government of each of such schools and other facilities and shall see that its affairs are conducted according to law and to such rules and regulations; but the purpose thereof and of all education, work, training, discipline, recreation, and other activities carried on in the schools and other facilities shall be to restore and build up the self-respect and self-reliance of the children and youth lodged therein and to qualify them for good citizenship and honorable employment.

The Superintendent

Sec. 22. The superintendent shall be a person of high moral character, education and training, and shall have the ability to develop and recommend an aggressive program for youth rehabilitation. He shall take the official oath and shall give bond in the sum of Ten Thousand Dollars ($10,000.00) payable to the Governor or his successors in office, conditioned for the faithful performance of the duties of his office. Such bond shall be approved by the Attorney General.

Powers and Duties of the Superintendents

Sec. 23. The superintendent of each school or other facility shall:

(a) Have general charge of and be responsible for the welfare and custody of the children lodged therein, and for carrying out the rehabilitation program prescribed by the Council. Under the direction of the Youth Council, he shall seek to establish relationships and to organize a way of life that will meet the spiritual, moral, physical, emotional, intellectual and social needs of the children under his care as those needs would be met in an adequate home;

(b) See that the buildings and premises are kept in good sanitary order;

(c) Cause to be kept the books of the school or facility fully exhibiting all moneys received and disbursed, the source from which received and purposes for which same is expended. All supplies for the school or facility shall be purchased in the same manner as for other similar institutions. Said books shall give a full record of all products produced, whether sold or consumed, and shall at all times be open for the inspection of the Youth Council, State Auditor, or the Governor.

Religious Training

Sec. 24. The Youth Council shall make provision for the religious and spiritual training of children in its custody and shall require all children in its diagnostic treatment or training facilities who are physically able to attend at least one (1) religious service of his own choice on each Sunday.

Power to Make Use of Existing Institutions and Agencies

Sec. 25. (a) For the purpose of carrying out its duties, the Youth Council is authorized to make use of law enforcement, detention, supervisory, medical, educational, correctional, segregative, and other facilities, institutions and agencies within the state. When funds are available for the purpose, the Youth Council may enter into agreements with the appropriate private or public official for separate care and special treatment in existing institutions of persons subject to the control of the Youth Council.

(b) Nothing herein shall be construed as giving the Youth Council control over existing facilities, institutions or agencies other than those listed in Section 8, or as requiring such facilities, institutions or agencies to serve the Youth Council inconsistently with their functions, or with the authority of their offices, or with the laws and regulations governing their activities; or as giving the Youth Council power to make use of any private institution or agency without its consent; or to pay a private institution or agency for services which a public institution or agency is willing and able to perform.

(c) The Youth Council is hereby given the right and shall be required periodically to inspect all public and all private institutions

and agencies whose facilities it is using. Every institution and agency, whether public or private, is required to afford the Youth Council reasonable opportunity to examine or consult with children committed to the Youth Council who are for the time being in the custody of the institution or agency.

(d) Placement of a child by the Youth Council in any institution or agency not operated by the Youth Council, or the release of such child from such an institution or agency, shall not terminate the control of the Youth Council over such child. No child placed in such institution or under such an agency may be released by the institution or agency without the approval of the Youth Council.

Contracts with Counties for Probation or Parole Services; Fee; Reports

Sec. 25A. (a) The Youth Council and each county may make an agreement to provide services of the county's juvenile probation department for the supervision of delinquent children within the county who are on temporary furlough or released under supervision from a facility of the Youth Council.

(b) Under an agreement, the Youth Council shall pay to the county One Dollar ($1.00) for each day for each child subject to the agreement within the county; except that the maximum payment for each month shall be Twenty Dollars ($20.00) per child within the county more than twenty (20) days during the month. The payments shall be made to the county treasurer on a quarterly schedule.

(c) No payments may be made for any period after a child has:

(1) been discharged from the custody of the Youth Council;

(2) returned to a facility of the Youth Council; or

(3) transferred his residence to another county or state.

(d) Each county having an agreement with the Youth Council under this section shall make reports to the Youth Council on the status and progress of each child for which the county is receiving payments. The reports shall be made at the times and in the manner specified by the agreement.

Power to Establish Additional Facilities

Sec. 26. When funds are available for the purpose, the Youth Council may:

(a) Establish and operate places for detention and diagnosis of all delinquent children committed to it;

(b) Establish and operate additional treatment and training facilities, including forestry or parks-maintenance camps and boys' ranches, necessary to classify and segregate and handle juvenile delinquents of different ages, habits and mental and physical condition according to their needs;

(c) Establish active parole supervision to aid children given conditional release to find homes and employment and otherwise to assist them to become re-established in the community and to lead socially acceptable lives.

Release Under Supervision

Sec. 27. The Youth Council may release under supervision at any time, and may place delinquent children in its custody in their usual homes or in any situation or family that it has approved. The Youth Council may, subject to appropriation, employ parole officers for investigating, placing, supervising and otherwise directing the activities of a parolee so as to insure his/her adjustment to society in accordance with rules and regulations established by the Texas Youth Council, and work with local organizations, clubs, and agencies in formulating plans and procedures for the prevention of juvenile delinquency. The Youth Council may, at any time, until finally discharged by the Youth Council, resume the care and custody of any child released under parole supervision.

Clothing, Money and Transportation Furnished on Release

Sec. 28. (a) The Youth Council shall insure that each delinquent child it releases under supervision has suitable clothing, transportation to his home, or to the county in which a suitable home or employment has been found for him, and such an amount of money as the rules of the Youth Council authorize.

(b) The expenditure for clothing and for transportation and the payment of money may be made from funds for support and maintenance appropriated to the Youth Council or to the institution from which such child was released, or from local funds, or from any appropriation specifically made for such purposes by the Legislature of the State of Texas.

Escape and Apprehension

Sec. 29. A boy or girl committed to the Youth Council as a delinquent child and placed by it in any institution or facility, who has escaped therefrom, or who has been released under supervision and broken the conditions thereof, may be arrested without a warrant by a sheriff, deputy sheriff, constable, police officer, or parole officer employed or designated by the Youth Council, and may be kept in custody in a suitable place and there detained until such boy or girl may be returned to the custody of the Youth Council.

Transfer of Mentally Ill, Feeble-Minded and Epileptics

Sec. 30. Whenever the Youth Council finds that any delinquent child committed to it is mentally ill, feeble-minded or an epileptic, the Youth Council shall have the power to return such child to the court of original jurisdiction for appropriate disposition or shall have the power to request the court in the county in which the training school is located to take such action as the condition of the child requires. In no case will the Youth Council upon the determination of such a finding related to any such child committed to its custody delay returning the child to the committing county or make application to the proper court for appropriate handling of the case beyond the minimum time necessary for the removal of the child from its facilities in accordance with law.

Termination of Control

Sec. 31. Every child committed to the Youth Council as a delinquent, if not already discharged, shall be discharged from custody of the Youth Council when he reaches his twenty-first birthday.

Civil Rights

Sec. 32. Commitment of a delinquent child to the custody of the Youth Council shall not operate to disqualify such child in any future examination, appointment or application for public service under the government either of the state or of any political subdivision thereof.

Use of Records

Sec. 33. The records of commitment of a delinquent child to the Youth Council shall be withheld from public inspection except with the consent of the Youth Council, but such records concerning any child shall be open at all reasonable times to the inspection of the child, his or her parents or parent, guardian, or attorney, or any of them. A commitment to the Youth Council shall not be received in evidence or used in any way in any proceedings in any court except in subsequent proceedings for delinquency against the same child, and except in imposing sentence in any criminal proceedings against the same person.

Records and Information

Sec. 34. The Youth Council shall conduct continuing inquiry into the effectiveness of the treatment methods it employs in seeking the reformation of delinquent children. To this end the Youth Council shall maintain a record of arrests and commitments of its wards subsequent to their discharge from the jurisdiction of the Youth Council and shall tabulate, analyze, and publish biennially these data so that they may be used to evaluate the relative merits of methods of treatment. The Youth Council shall cooperate with courts, private and public agencies in the collection of statistics and information regarding juvenile delinquency, arrests made, complaints, informations, and petitions filed, and the disposition made thereof, and other information useful in determining the amount and causes of juvenile delinquency in this state.

Assisting Escape

Sec. 35. Whoever shall knowingly aid or assist any delinquent child in the custody of the Youth Council to escape or to attempt to escape shall be subject to the penalties provided in Article 334 of the Penal Code.

Biennial Budget

Sec. 36. The Executive Director shall prepare and submit to the Youth Council, for its approval, a biennial budget of all funds necessary to be appropriated by the Legislature for the Youth Council for the purposes of this Act. The budget so prepared shall be submitted and filed by the Youth Council in the form and manner and within the time prescribed by law.

Transfer of Appropriations

Sec. 37. There is hereby transferred to the Texas Youth Council all moneys appropriated for the two-year period ending August 31, 1959, for the Central Office of the Youth Development Council; the Corsicana State Home (State Orphan Home); the Blind, Deaf and Orphan School; the Waco State Home; the Gatesville School for Boys; the Gainesville School for Girls; and the Colored Girls Training School. The appropriations for the specific institutions, hereby transferred, shall be expended in accordance with the provisions of House Bill 133, Acts of the Regular Session, 55th Legislature,[1] and this Act. The appropriations for the Central Office of the Youth Development Council shall be used for the payment of per diem and expenses of Texas Youth Council members, salaries of the Director and of other personnel employed in the Central Office of the Youth Council, and all other expenses incidental to the maintenance and operation of the Central Office. Salaries paid to all personnel in the Central Office during the biennium shall be fixed by the Youth Council in keeping with standards fixed in the biennial appropriation Act for similar positions. Travel expenses shall be subject to the provisions of the biennial appropriation Act.

Section 8.07, Texas Penal Code

"Sec. 8.07. Age Affecting Criminal Responsibility

"(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, 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.

"(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, 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.

"(c) Unless the juvenile court waives jurisdiction and certifies the individual for criminal prosecution, a person who has been alleged in a petition for an adjudication hearing to have engaged in delinquent conduct or conduct indicating a need for supervision may not be prosecuted for or convicted of any offense alleged in the juvenile court petition or any offense within the knowledge of the juvenile court judge as evidenced by anything in the record of the juvenile court proceedings.

"(d) No person may, in any case, be punished by death for an offense committed while he was younger than 17 years."

Article 6701l-4, Texas Civil Statutes

Art. 6701l—4. Driving by certain minors while intoxicated; traffic violations

Section 1. Any male minor who has passed his 14th birthday but has not reached his 17th birthday, and any female minor who has passed her 14th birthday but has not reached her 18th birthday, and who drives or operates an automobile or any other motor vehicle on any public road or highway in this state or upon any street or alley within the limits of any city, town or village, or upon any beach as defined in Chapter 430, Acts of the 51st Legislature, 1949,[1] while under the influence of intoxicating liquor, or who drives or operates an automobile or any other motor vehicle in such way as to violate any traffic law of this state, shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Hundred Dollars ($100.00). As used in this section, the term "any traffic law of this state" shall include the following statutes, as heretofore or hereafter amended:

Chapter 42, Acts of the 41st Legislature, Second Called Session, 1929 (Article 827a, Vernon's Texas Penal Code),[2] except Section 9a thereof; Chapter 421, Acts of the 50th Legislature, Regular Session, 1947 (Article 6701d, Vernon's Texas Civil Statutes); Chapter 430, Acts of the 51st Legislature, Regular Session, 1949, (Article 827f, Vernon's Texas Penal Code);[3] and Articles 795[4] and 801,[5] Texas Penal Code of 1925.

Sec. 1a. No such minor may plead guilty to any offense described in Section 1 of this Act except in open court before the judge. No such minor shall be convicted of such an offense or fined as provided in this Act except in the presence of one or both parents or guardians having legal custody of the minor. The court shall cause one or both parents or guardians to be summoned to appear in court and shall require one or both of them to be present during all proceedings in the case. However, the court may waive the requirement of the presence of parents or guardians in any case in which, after diligent effort, the court is unable to locate them or to compel their presence.

Sec. 2. No such minor, after conviction or plea of guilty and imposition of fine, shall be committed to any jail in default of payment of the fine imposed, but the court imposing such fine shall have power to suspend and take possession of such minor's driving license and retain the same until such fine has been paid.

Sec. 3. If any such minor shall drive any motor vehicle upon any public road or highway in this state or upon any street or alley within the limits of any corporate city, town or village, or upon any beach as defined in Chapter 430, Acts of the 51st Legislature, 1949, without having a valid driver's license authorizing such driving, such minor shall be guilty of a misdemeanor and shall be fined as set out in Section 1 hereof.

Sec. 4. The offenses created under this Act shall be under the jurisdiction of the courts regularly empowered to try misdemeanors carrying the penalty herein affixed, and shall not be under the jurisdiction of the Juvenile Courts; but nothing contained in this Act shall be construed to otherwise repeal or affect the statutes regulating the powers and duties of Juvenile Courts. The provisions of this Act shall be cumulative of all other laws on this subject.

Sec. 5. Chapter 436, Acts of the 51st Legislature, Regular Session, 1949,[6] is hereby repealed, but the repeal thereof shall not exempt from punishment any person who may have previously violated such repealed law, and persons convicted of a violation thereof shall be punished as therein provided.

Acts 1957, 55th Leg., p. 736, ch. 302, Sec. 1a added by Acts 1967, 60th Leg., p. 1086, ch. 476, § 1, eff. Aug. 28, 1967.

[1] Article 6701d—21.
[2] Transferred; see, now, article 6701d—11.
[3] Transferred; see, now, article 6701d—21.
[4] Repealed; see, now, article 6701d, § 185.
[5] Repealed by V.T.C.A. Penal Code.
[6] Probably legislative intention to repeal "chapter 436, Acts of the 52nd Legislature, Regular Session, 1951" [Vernon's Ann.P.C. art. 802d; now, article 6701l—3] as recited in title of this Act.

This article was transferred from Vernon's Ann.P.C. art. 802e by authority of § 5 of Acts 1973, 63rd Leg., p. 995, ch. 399, enacting the new Texas Penal Code.

CHAPTER 25. UNIFORM INTERSTATE COMPACT ON JUVENILES

Section

25.01. Short Title.
25.02. Execution of Interstate Compact.
25.03. Execution of Additional Article.
25.04. Execution of Amendment.
25.05. Juvenile Compact Administrator.
25.06. Supplementary Agreements.
25.07. Financial Arrangements.
25.08. Enforcement.
25.09. Additional Procedures not Precluded.

Section 25.01. Short Title

This chapter may be cited as the Uniform Interstate Compact on Juveniles.

Historical Note

Prior Law:

Acts 1965, 59th Leg., p. 676, ch. 324, § 1.
Vernon's Ann.Civ.St. art. 5143e, § 1.

Library References

States ⇐6. C.J.S. States § 10.

§ 25.02. Execution of Interstate Compact

The governor shall execute a compact on behalf of the state with any other state or states legally joining in it in substantially the following form:

"INTERSTATE COMPACT ON JUVENILES

"The contracting states solemnly agree:

"Article I

"FINDINGS AND PURPOSE

"That juveniles who are not under proper supervision and control, or who have absconded, escaped, or run away are likely to endanger their own health, morals, and welfare, and the health, morals, and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to (1) cooperative supervision of delinquent juveniles on probation or parole; (2) the return,

from one state to another, of delinquent juveniles who have escaped or absconded; (3) the return, from one state to another, of nondelinquent juveniles who have run away from home; and (4) additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively. In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformative, and protective policies which guide their laws concerning delinquent, neglected, or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

"Article II

"EXISTING RIGHTS AND REMEDIES

"That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies, and procedures, and shall not be in derogation of parental rights and responsibilities.

"Article III

"DEFINITIONS

"That, for the purpose of this compact, 'delinquent juvenile' means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; 'probation or parole' means any kind of conditional release of juveniles authorized under the laws of the states party hereto; 'court' means any court having jurisdiction over delinquent, neglected, or dependent children; 'state' means any state, territory, or possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and 'residence' or any variant thereof means a place at which a home or regular place of abode is maintained.

"Article IV

"RETURN OF RUNAWAYS

"(a) That the parent, guardian, person, or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person,

or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner, and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person, or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected, or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person, or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite

the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

"Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person, or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding 90 days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense of juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

"(b) That the state to which a juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.

"(c) That 'juvenile' as used in this article means any person who is a minor under the law of the state of residence of the parent, guardian, person, or agency entitled to the legal custody of such minor.

"Article V

"RETURN OF ESCAPEES AND ABSCONDERS

"(a) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

"Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an

institution or agency vested with this [1] legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding 90 days, as will enable his detention under a detention order issued on a requisition pursuant to this article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense of juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

"(b) That the state to which a delinquent juvenile is returned under this article shall be responsible for the payment of the transportation costs of such return.

[1] So in enrolled bill; probably should read "his".

"Article VI

"VOLUNTARY RETURN PROCEDURE

"That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of Article IV(a) or of Article V(a), may consent to his immediate return to the state from which he absconded, escaped, or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, by executing or subscribing in writing, in

the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

"Article VII

"COOPERATIVE SUPERVISION OF PROBATIONERS AND PAROLEES

"(a) That the duly constituted judicial and administrative authorities of a state party to this compact (herein called 'sending state') may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called 'receiving state') while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian, or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies, and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian, or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

"(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exer-

cise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

"(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceedings to have him adjudicated a delinquent juvenile for any act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense of juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

"(d) That the sending state shall be responsible under this article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

"Article VIII

"RESPONSIBILITY FOR COSTS

"(a) That the provisions of Articles IV(b), V(b), and VII(d) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

"(b) That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV(b), V(b), or VII(d) of this compact.

"Article IX

"DETENTION PRACTICES

"That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail, or lockup nor be detained or transported in association with criminal, vicious, or dissolute persons.

"Article X

"SUPPLEMENTARY AGREEMENTS

"That the duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment, and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment, and rehabilitation. Such care, treatment, and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall (1) provide the rates to be paid for the care, treatment, and custody of such delinquent juveniles, taking into consideration the character of facilities, services, and subsistence furnished; (2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment, and custody; (3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile; (4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state; (5) provide for reasonable inspection of such institutions by the sending state; (6) provide that the consent of the parent, guardian, person, or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and (7) make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

"Article XI

"ACCEPTANCE OF FEDERAL AND OTHER AID

"That any state party to this compact may accept any and all donations, gifts, and grants of money, equipment, and services from the federal or any local government, or any agency thereof and from any person, firm, or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same, subject to the

terms, conditions, and regulations governing such donations, gifts, and grants.

"Article XII

"COMPACT ADMINISTRATORS

"That the governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

"Article XIII

"EXECUTION OF COMPACT

"That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form or execution to be in accordance with the laws of the executing state.

"Article XIV

"RENUNCIATION

"That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending six months notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six months renunciation notice of the present article.

"Article XV

"SEVERABILITY

"That the provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstances shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

§ 25.03. Execution of Additional Article

The governor shall also execute on the behalf of the state with any other state or states legally joining in it, an additional article to the Interstate Compact on Juveniles in substantially the following form:

"Article XVI

"ADDITIONAL ARTICLE

"That this article shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

"For the purposes of this article, 'child,' as used herein, means any minor within the jurisdictional age limits of any court in the home state.

"When any child is brought before a court of a state of which such child is not a resident, and such state is willing to permit such child's return to the home state of such child, such home state, upon being so advised by the state in which such proceeding is pending, shall immediately institute proceedings to determine the residence and jurisdictional facts as to such child in such home state, and upon finding that such child is in fact a resident of said state and subject to the jurisdiction of the court thereof shall within five days authorize the return of such child to the home state, and to the parent or custodial agency legally authorized to accept such custody in such home state, and at the expense of such home state, to be paid from such funds as such home state may procure, designate, or provide, prompt action being of the essence."

§ 25.04. Execution of Amendment

The governor shall also execute on the behalf of the state with any other state or states legally joining in it, an amendment to the Interstate Compact on Juveniles in substantially the following form:

"RENDITION AMENDMENT

"(a) This amendment shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

"(b) All provisions and procedures of Articles V and VI of the Interstate Compact on Juveniles shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile charged with being a delinquent by reason of violating any criminal law shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless

of whether the juvenile has left the state before or after the filing of the petition. The requisition described in Article V of the compact shall be forwarded by the judge of the court in which the petition has been filed."

§ 25.05. Juvenile Compact Administrator

Under the compact, the governor may designate an officer as the compact administrator. The administrator, acting jointly with like officers of other party states, shall adopt regulations to carry out more effectively the terms of the compact. The compact administrator serves at the pleasure of the governor. The compact administrator shall cooperate with all departments, agencies, and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of a supplementary agreement entered into by this state.

§ 25.06. Supplementary Agreements

A compact administrator may make supplementary agreements with appropriate officials of other states pursuant to the compact. If a supplementary agreement requires or contemplates the use of an institution or facility of this state or requires or contemplates the provision of a service of this state, the supplementary agreement has no force or effect until approved by the head of the department or agency under whose jurisdiction the institution is operated, or whose department or agency is charged with performing the service.

§ 25.07. Financial Arrangements

The compact administrator may make or arrange for the payments necessary to discharge the financial obligations imposed upon this state by the compact or by a supplementary agreement made under the compact, subject to legislative appropriations.

§ 25.08. Enforcement

The courts, departments, agencies, and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to effectuate its purposes and intent which are within their respective jurisdictions.

§ 25.09. Additional Procedures not Precluded

In addition to the procedures provided in Articles IV and VI of the compact for the return of a runaway juvenile, the particular states, the juvenile, or his parents, the courts, or other legal custodian involved may agree upon and adopt any plan or procedure legally authorized under the laws of this state and the other respective party states for the return of the runaway juvenile.

Client (Patient) Care

Admissions, Transfers, Furloughs, and Discharges-- State Schools for the Retarded 302.04.24

The Texas Department of Mental Health and Mental Retardation has adopted Rules 302.04.24.001-.030 with several changes in the proposed text. Most of the changes in the rules were of a technical nature. Rule 302.04.24.016 of the proposed text was deleted and the rules have been renumbered accordingly.

No comments concerning the proposed rules have been received by the Texas Department of Mental Health and Mental Retardation.

Rules 302.04.24.001-.031 are adopted under the authority of Section 2.11(b), Article 5547-202, Texas Civil Statutes.

.001. *Purpose.* The purpose of these rules is to establish criteria, procedures, and processes for:

(a) determining a person to be mentally retarded;

(b) placement of a person in a residential facility for the mentally retarded;

(c) transfer of a client between a residential facility for the mentally retarded in Texas and

(1) another residential facility for the mentally retarded in Texas,

(2) a residential facility for the mentally ill in Texas, or

(3) a residential facility for the mentally retarded in another state;

(d) furlough of a client from a residential facility for the mentally retarded;

(e) discharge of a client from a residential facility for the mentally retarded; and

(f) movement into and within residential facilities for the mentally retarded which are designed to meet certain legal and humane standards and to protect the rights of the applicant for admission at each decision point.

.002. *Application.* These rules apply to all residential facilities for the mentally retarded of the Texas Department of Mental Health and Mental Retardation.

.003. *Definitions.* In these rules,

(a) "mental retardation" means a condition characterized by significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period;

(b) "subaverage general intellectual functioning" means that a person possesses a measured IQ of more than two standard deviations below the mean of an appropriate instrument;

(c) "adaptive behavior" means the effectiveness or degree with which the individual meets the standards of personal independence and social responsibility expected of the person's age and cultural group. A table of descriptions and illustrations of expected behavior has been developed by the American Association on Mental Deficiency (AAMD) to guide in determining adaptive behavior level (see *Manual on Terminology and Classification in Mental Retardation,* 1973, AAMD);

(d) "developmental period" means the period of a person's life which begins at conception and extends to the age of 18 years. The requirement that mental retardation manifest itself during the developmental period serves to distinguish the condition of mental retardation from other disorders of human behavior;

(e) "mentally retarded person" means a person determined by a comprehensive diagnostic and evaluation study to have the condition defined as mental retardation;

(f) "moderately retarded" means that a person possesses a measured IQ of more than three standard deviations below the mean of an appropriate instrument existing concurrently with Level II adaptive behavior as described in the *Manual on Terminology and Classification in Mental Retardation,* 1973, prepared by the AAMD;

(g) "residential facility for the mentally retarded" means a facility of the Texas Department of Mental Health and Mental Retardation that provides 24-hour services, including domiciliary services, for the mentally retarded;

(h) "community mental health and mental retardation center" means an entity organized pursuant to Article 5547-203, Vernon's Texas Civil Statutes, which provides mental retardation services;

(i) "mental retardation services" means programs and assistance for mentally retarded persons and may include, but is not limited to, diagnosis and evaluation, education, recreation, special training, supervision, care, medical treatment, rehabilitation, room and board, and counseling, but does not include those programs or assistance which have been explicitly delegated by law to other state agencies;

(j) "client" means a person receiving mental retardation services from the Texas Department of Mental Health and Mental Retardation;

(k) "least restrictive alternative" means a program, treatment, or environment appropriate to the client's needs and which is the least confining or structured for the client's condition;

(l) "comprehensive diagnosis and evaluation" means a study including a sequence of observations and examinations of a person leading to conclusions and recommendations formulated jointly, with dissenting opinions, if any, by an interdisciplinary team. They shall include, but not be limited to, the following procedures:

(1) medical evaluation:

(A) visual screening;

(B) hearing screening;

(C) routine laboratory tests (urinalysis, tuberculin testing, hematologic or blood chemistry tests, and so forth);

(D) neurological screening, if indicated;

(E) identification of other possible dysfunctions which would cause handicaps creating difficulty for a person in adapting to his or her environment;

(F) referral to medical specialists such as, but not limited to, neurologists and audiologists, where the evaluation indicates the need;

(2) psychological evaluation:

(A) intellectual appraisal:

(i) traditional instruments;

(ii) culture-free instruments, if available;

(B) achievement tests as appropriate:

(i) educational;

(ii) vocational;

(C) tests for organicity;

(D) personality test and other measures as appropriate;

(E) referral to specialists such as, but not limited to, psychiatrists and neurologists, where the evaluation indicates the need;

(3) adaptive behavior evaluation:

(A) AAMD Adaptive Behavior Scale and other measures of adaptive behavior, as appropriate;

(B) observation;

(C) clinical conclusions;

(4) social history evaluation:

(A) inquiry into the person's immediate and historical environment;

(B) inquiry into the person's present cultural and social situation;

(C) descriptions of the person's behavior (positive and negative) in the community environment.

Following the gathering of data by means of observations and examinations, a team of professionals repre-

senting at least the areas of medicine, psychology, and social services, and any other relevant area, as well as, if appropriate, the client, his parent, guardian, or advocate, will meet as an interdisciplinary team to consider the applicant and reach a consensus as to the existence of mental retardation, specific needs of the person, and recommended program placement;

(m) "interdisciplinary team" means a group of persons professionally qualified, certified, or both, in various professions with special training and experience in the diagnosis, management, needs, and treatment of mentally retarded persons and in the delivery of mental retardation services that functions as a team. Each team member shall consider all information and recommendations so that a set of unified and integrated team conclusions and recommendations is devised;

(n) "individual program plan" (IPP) means a written plan of intervention and action that is developed and modified as appropriate by the interdisciplinary team. Goals and objectives are specified separately and within a time frame and in behavior terms that provide measurable indices of progress and enable the effectiveness of intervention to be evaluated. Modes of intervention for stated objectives are specified, and responsibility for service delivery is identified. The IPP is sometimes referred to as a "habilitation plan;"

(o) "resident of the state" means

(1) a person who

(A) physically resides in Texas, and

(B) intends to remain in Texas indefinitely or who has no present intention to leave, and

(C) is able to show that residence in any state other than Texas has been abandoned;

(2) a person who has established his residency in Texas but is temporarily absent from the state; or

(3) a military dependent who is a minor and whose parents' residence of record is Texas;

(p) "placement" means the assignment of a client to a program or to a residential facility for the mentally retarded for the purpose of receiving appropriate care, treatment, and training;

(q) "regular placement" means a placement which is made only after a temporary placement. The regular placement is time specific, and it will be reviewed and updated at least annually. Renewal of regular placement is allowed as the needs of the client indicate. Renewal of regular placement requires that the habilitation plan be updated and that a new agreement between client, parent or guardian, and facility be executed. Criteria and procedures for regular placement are contained in Rule .007 of these rules;

(r) "temporary placement" means a placement made for a maximum period of six months and is renewable in succession only once. Renewal of temporary placement requires meeting the criteria and procedures for an initial temporary placement which are contained in Rule .008 of these rules;

(s) "emergency placement" means a placement made for a maximum period of 30 days. An emergency placement is not renewable in succession. If care is needed beyond the initial period, the client, parent, or guardian may make application for a temporary placement. Criteria and procedures for emergency placement are contained in Rule .009 of these rules;

(t) "client transfer" means the transfer of a client to another residential facility for the mentally retarded or to a residential mental health facility. The facility to which the client is transferred assumes total responsibility for the care, treatment, and programming of the client. Criteria and procedures for client transfer are contained in Rules .010-.015 of these rules;

(u) "client furlough" means the client is physically absent from the facility longer than 72 hours for program purposes. Final responsibility for the care, treatment, and programming of the client remains with the residential facility for the mentally retarded; however, the facility is relieved of all legal responsibility while the client is physically absent from the facility. Criteria and procedures for client furlough are contained in Rules .016-.021 of these rules. There are three basic types of furlough:

(1) "short-term furlough" which includes furloughs for such purposes as a visit home;

(2) "long-term furlough" which includes furloughs for such purposes as a trial placement for alternate care, that is, a "trial alternate placement;" and

(3) "temporary furlough" which is a placement of a client in a residential facility for the mentally ill under Section 16 of the Mentally Retarded Persons Act, Article 3871b, Vernon's Annotated Civil Statutes;

(v) "client discharge" means the client physically leaves the residential facility for the mentally retarded and is no longer considered a client of the school for program purposes. Upon the discharge of a client, all responsibility for the care, treatment, and training of the client by the residential facility is dissolved. Criteria and procedures for client discharge are contained in Rules .023-.027 of these rules;

(w) "department" means the Texas Department of Mental Health and Mental Retardation;

(x) "commissioner" means the Commissioner of the Texas Department of Mental Health and Mental Retardation;

(y) "superintendent" means the superintendent or director who is the administrative head of a department facility;

(z) "deputy commissioner" means the Deputy Commissioner of Mental Retardation Services of the Texas Department of Mental Health and Mental Retardation;

(aa) "coordinator of state school admissions" means the person on the staff of the Mental Retardation Services in the central office of the department who is responsible for monitoring and maintaining the central waiting list;

(bb) "central waiting list" means the state-wide registry of persons seeking admission to a residential facility for the mentally retarded;

(cc) "client's residential facility" or "current placement facility" means the department or other facility in which the client currently resides and from which transfer or furlough to another facility is contemplated or proposed;

(dd) "destination facility" means the department or other facility to which transfer, furlough, or discharge of a client is contemplated or proposed.

.004. Admission to a Residential Facility for the Mentally Retarded: Requirements for Admission; Application Process.

(a) A person may be admitted to a residential facility for the mentally retarded only if the following requirements for admission are met:

(1) Residency. A person must be a *bona fide* resident of this state as defined in Rule .003(o) of these rules in order for an application for his or her admission to a residential facility for the mentally retarded to be considered.

(2) Application.

(A) An Application for Admission Form, which is attached to these rules as Exhibit "A," must be completed and submitted. The application procedure originates in the community with the family, guardian, or potential applicant securing the application form from

(i) a community mental health and mental retardation center,

(ii) a state school for the mentally retarded, or

(iii) a state human development center. It shall be the responsibility of the community mental health and mental retardation center or state human development center serving the county of residence to provide assistance in the completion of the application

form as well as the necessary.

(B) A completed application includes:

(i) completed application form;

(ii) financial diagnostic and evaluation services. In those counties not served by a community MHMR center or state human development center, it will be the responsibility of the appropriate state school staff to provide these services.statement;

(iii) recent photograph;

(iv) immunization record;

(v) medical history;

(vi) Social Security card (duplicate or copy);

(vii) copy of birth certificate;

(viii) if the prospective client is a minor and the authority of parents is unclear, evidence of guardianship or right to custody of the minor;

(ix) if the prospective client is an adult, evidence of the existence or nonexsitence of a guardianship;

(x) copies of all diagnostic and evaluation study results and all other reports pertinent to certification of mental retardation and determination of eligibility for services; and

(xi) social history.

(3) Endorsement.

(A) If the county in which the prospective client resides is served by a community mental health and mental retardation center or by a state human development center, the application for admission must be endorsed by the center staff prior to submission of the application to a state school for the mentally retarded for an eligibility determination.

(B) As a part of endorsing the application, the community mental health and mental retardation center or state human development center will provide documentation certifying that:

(i) an interdisciplinary team has determined that the applicant is a mentally retarded person;

(ii) the diagnosis and evaluation has been performed or updated within 90 days prior to the date of the endorsement;

(iii) the client, parent, or guardian has been apprised of the evaluation findings and has been informed of the right to an independent evaluation and appraisal for the purpose of contesting the findings, recommendations, or both;

(iv) all community programs and resources have been explored and state school placement is the resource of choice. A list of specific resources explored with indications as to why they are not available or appropriate must be included;

(v) the person cannot be adequately and appropriately habilitated in a less restrictive environment, or a placement in such a less restrictive environment is not available;

(vi) the client, parent, or guardian has been counseled on the relative advantages, disadvantages, and temporary nature of residential services at a state school;

(vii) the primary beneficiary of the admission is the client, the family, the community, society, or any combination of these.

(C) Where admission is not endorsed as the optimal measure, the inappropriateness of admission shall be clearly acknowledged and documented as part of the record and the application shall be forwarded to the state school serving the area.

(4) Eligibility certification.

(A) Certification of eligibility for state school placement and placement on the central waiting list is made by the state school for the mentally retarded serving the area in which the prospective client resides. Prior to certification of eligibility, the state school shall certify that:

(i) the application is complete and that the comprehensive diagnostic and evaluation has been performed or updated are current within six months. If not complete, it shall be promptly returned to the community center or other facility initiating the application along with a statement as to why it is incomplete. If the diagnostic and evaluation data are not current, the application should be returned to the community center or other facility initiating the application and the entire admission process shall be reviewed to determine the present need for admission;

(ii) the applicant is a mentally retarded person as determined by an interdisciplinary admission staff by examining results and recommendations of the community mental health and mental retardation center's or state human development center's interdisciplinary evaluation;

(iii) all available and applicable community programs and resources have been explored;

(iv) admission to the state school is the optimal available plan;

(v) where admission is not the optimal measure but must nevertheless be recommended, its inappropriateness is clearly acknowledged and plans will be initiated for the continued and active exploration of alternatives;

(vi) the applicant is eligible for state school placement; and

(vii) whether or no eligible for long-term care, and, therefore,eligible for placement on the central waiting list.

(B) All applications which there is disagreement over primary diagnosis will be referred to the Committee on Alternate Placement in the appropriate deputy commissioner's officer, central office, for eligibility determination.

(C) Immediately upon certification of eligibility for state school placement, the state school shall:

(i) notify the client, parent, or guardian of certification of eligibility for state school placement and that the application is being forwarded to the central office of the department and the coordinator of state school admissions;

(ii) notify the community mental health and mental retardation center or the state human development center which endorsed the application of the disposition of the application;

(iii) explain to the client, parent, or guardian the nature of the central waiting list and that immediate placement may not be available;

(iv) complete Form 02, which is attached to these rules as Exhibit "B," and forward it to the Coordinator of State School Admission, Texas Department of Mental Health and Mental Retardation, 909 West 45th Street, Austin, Texas. If active status is requested, the endorsed and certified application should be forwarded along with Form 02 to the coordinator of state school admissions.

(b) A list of department-approved diagnostic centers is attached to these rules as Exhibit "H"

.005. Admission to a Residential Facility for the Mentally Retarded: the Nature and Procedures of the Central Waiting List.

(a) Ordinarily, only those applicants determined to be moderately or more severely retarded will be eligible for placement on the central waiting list. When an applicant has been certified eligible for state school placement, the state school shall complete Form 02 and forward it to the Coordinator of State School Admissions, Texas Department of Mental Health and Mental Retardation, 909 West 45th Street, Austin, Texas, who may then place the applicant on the central waiting list. If the applicant is to be placed on active status, the complete file shall accompany Form 02.

(b) All applicants placed on the central waiting list are eligible for consideration for admission to any residential facility for the mentally retarded which serves individuals of the specific age and functional level of the applicant. Priority consideration for admission to a residential facility for the mentally retarded will be governed by the following four basic factors:

(1) previous placement in a residential facility

for the mentally retarded;

(2) the priority classification assigned by the state school to each applicant after a complete evaluation. The priority classification is placed on Form 02;

(3) the date on which the applicant is placed on the central waiting list;

(4) the compatability of the applicant to the vacancy at the residential facility for the mentally retarded. Factors which affect the applicant's compatability to the facility include, but are not necessarily limited to, the existence or nonexistence of programs at the facility which would meet the needs of the applicant and the proximity of the facility to the applicant's place of residence.

(c) When a residential facility for the mentally retarded reports a vacancy, the coordinator of state school admissions will forward to that facility the applications of applicants whose names are at the top of the waiting list designated for the specific dormitory of the facility where the vacancy exists.

(d) Upon receipt of an application from the coordinator of state school admissions, the residential facility for the mentally retarded shall:

(1) determine if the diagnostic and evaluation data are current within one year. If the data are not current within one year, the application shall be returned to the coordinator of state school admissions, who will initiate action to have the application updated by the facility which certified the applicant for admission prior to further consideration for placement. If the interdisciplinary team of the facility which certified the applicant for admission determines that the admission is not now appropriate, the application will be returned to the coordinator of state school admissions with the recommendation that placement of the applicant in a state school would now be inappropriate; and

(2) determine if the existing vacancy is appropriate for the applicant and if programs appropriate to the needs of the applicant are available at the facility.

(e) Within 30 days of the receipt of an application from the coordinator of state school admissions, the residential facility for the mentally retarded shall either

(1) schedule admission of the applicant, or

(2) return the application to the coordinator of state school admissions indicating why admission of the applicant was not offered by the facility.

(f) At least annually, the coordinator of state school admissions will forward to the appropriate community mental health and mental retardation center or state human development center or, if neither type center exists, to the state school, a questionnaire for each active applicant on the central waiting list for the purpose of determining

(1) whether the applicant is still in need of placement in a residential facility for the mentally retarded;

(2) whether there have been significant changes in the physical characteristics (general condition of health; handicaps, if any; level of functioning; deterioration or improvement in his or her overall condition) of the applicant;

(3) whether home and community conditions have been altered to the extent that the priority rating for the applicant should be changed.

(g) Upon its receipt of the questionnaire, the community mental health and mental retardation center, the state center for human development, or the state school, as the case may be, will contact the applicant, parent, guardian, or responsible agency in order to make the determinations required by the questionnaire. Failure to reply to the questionnaire will cause the coordinator of state school admissions to inactivate the application.

(h) Persons in state hospitals with a primary diagnosis of mental retardation will be placed on the central waiting list in accordance with these rules governing all applications for admission, provided, however, that the rules for admission may be waived or otherwise modified by the deputy commissioner for mental retardation services acting within his discretion and sound judgment.

.006. Admission to a Residential Facility for the Mentally Retarded: General Provision.

(a) Each admission to a residential facility for the mentally retarded shall be on a time-specific basis.

(b) No person will be admitted to a residential facility for the mentally retarded if the admission of the person would cause the facility to exceed the rated bed capacity on the dormitory of placement.

(c) Admission of the following persons to regular placement in a residential facility for the mentally retarded requires special review and approval by the staff of the deputy commissioner for mental retardation services:

(1) persons under one year of age, and

(2) persons under six years of age who are not bedfast.

(d) Persons with a primary diagnosis of psychosis or other severe emotional disorder will not be admitted to a residential facility for the mentally retarded.

(e) Each client admitted to a residential facility for the mentally retarded, and the parent or guardian, will be fully informed of the client's rights and responsibilities and of all rules and regulations governing the client's conduct and responsibilities. This information will be provided prior to or at the time of admission.

(f) Prior to regular or temporary admission, the parents or guardian shall be encouraged to visit, and the client should have visited, the facility and the living unit in which the client is to be placed.

(g) The department operates in compliance with the U.S. Civil Rights Act of 1964, as amended.

.007. Admission to a Residential Facility for the Mentally Retarded: Requirements for Regular Placement. Regular placement of a person in a residential facility for the mentally retarded requires that

(a) the person be on the central waiting list;

(b) a comprehensive diagnosis and evaluation has resulted in a determination that the person is a mentally retarded person;

(c) the comprehensive diagnosis and evaluation has been performed or updated within three months prior to admission to regular placement;

(d) the person is moderately retarded or more severely retarded;

(e) evidence be presented showing that because of mental retardation the person

(1) represents a substantial risk of physical impairment or injury to himself, or

(2) is unable to provide for and is not providing for his basic physical needs, or

(3) has acted violently within the preceding 120 days by attempting to inflict serious bodily harm upon himself or others, and

(4) has completed a period of temporary placement in accordance with Rule .008 of these rules and continues to need and will benefit from the program services available at the residential facility for the mentally retarded;

(f) the person cannot be adequately and appropriately served in a less restrictive environment or placement in a program in such an environment is not available;

(g) there is substantial probability the person will achieve the goals of regular placement within the time period allowed;

(h) the client, if capable, the parent of a minor client, or the guardian of a client and the facility attempt to develop a written statement as to the

(1) specific skills or assistance needed,

(2) proposed goals,

(3) time period necessary to achieve the goals of placement, and

(4) participation of the client in the habilitation plan developed; and

(i) the superintendent make a determination

that the residential facility for the mentally retarded is able to provide habilitative services, care, and treatment appropriate to the individual's needs and that services are not available in a less restrictive environment or placement if a program in such an evironment is not available.

.008. *Admission to a Residential Facility for the Mentally Retarded: Requirements for Temporary Placement.* Temporary placement of a person in a residential facility for the mentally retarded requires that

(a) the person has been determined to be a mentally retarded person;

(b) the person is in need of specific short-term training or special care;

(c) the appropriate training or assistance cannot be provided in a less restrictive environment, or that services are not available in a less restrictive environment, or that placement in a program in such an environment is not available;

(d) there is substantial probability that the person will achieve the goals of temporary placement within the time period allowed;

(e) the client, if capable, the parent of a minor client, or the guardian of a client and the facility attempt to develop a written statement as the

(1) specific skills or assistance needed,

(2) proposed goals,

(3) time period necessary to achieve the goals of placement, and

(4) participation of the client in the habilitation program developed; and

(f) the superintendent make the determination that the residential facility is able to provide habilitative services, care, and treatment appropriate to the individual's needs and that services are not available in a less restrictive environment or that placement in a program in such as environment is not available.

.009. *Admission to a Residential Facility for the Mentally Retarded: Requirements for Emergency Placement.* Emergency placement of a person in a residential facility for the mentally retarded requires that

(a) the person is thought to be a mentally retarded person; and

(b) a family crisis occurs such as sudden illness, an emotional problem, or death which necessitates immediate placement; or

(c) the person needs urgent short-term care which the facility can provide; and

(d) the necessary care is not available in a less restrictive environment provided by the department or a community mental health and mental retardation center within a reasonable distance from the person's home; and

(e) the client, if capable, the parent of a minor client, or the guardian of a client and the facility attempt to develop a written statement (Exhibit "C"--Emergency Admission Application, which is attached to these rules) as to the

(1) specific skills or assistance needed,

(2) proposed goals,

(3) time period necessary to achieve the goals of placement, and

(4) participation of the client in a habilitation program developed, and

(f) the superintendent make the detemination that the residential facility for the mentally retarded is able to provide appropriate care and treatment and that services are not available in a less restrictive environment or that placement in a program in such an environment or that placement in a program in such an environment is not available.

.010. *Client Transfers: General Provisions.*

(a) The transfer of a client from one Texas residential facility for the mentally retarded to another will be made only if it is in the best interest of the client.

(b) Reasons for transfer of a client from one Texas residential facility for the mentally retarded to another include:

(1) availability of programs, assistance, or both, required by the client which are not available at the residential facility for the mentally retarded where the client currently resides;

(2) placement nearer the client's home community; and

(3) removal of the client from an unpleasant, potentially harmful, or damaging environment.

(c) The transfer of a voluntarily admitted client will be governed by the following rules:

(1) If the client is a minor and his parents or guardian voluntarily admitted him, and if the minor client's parents or guardian object to the transfer, such objection may operated as a withdrawal of the voluntary admission.

(2) If the client is an adult who voluntarily admitted himself or who was voluntarily admitted by his guardian, and if the adult client or his guardian objects to the transfer, such objection may operate as a withdrawal of the voluntary admission.

(3) If there is an objection in a situation described in subparagraph (1) or (2) of this paragraph (c), the superintendent shall pursue one of the following courses of action:

(A) the client may be retained and transfer planning terminated,

(B) the client shall be discharged, or

(C) a court commitment of the client may be initiated.

.011. *Client Transfers: Regular Transfer of a Client Between Texas Residential Facilities for the Mentally Retarded.* The regular transfer of a client between Texas residential facilities for the mentally retarded requires that

(a) a request for transfer (see Exhibit "D"which is attached to these rules) be completed by the client, his parent or guardian, an advocate, or the superintendent of the residential facility for the mentally retarded where the client currently resides; and

(b) the appropriate interdisciplinary team review the transfer request, the client's needs, and the client's habilitation plan with the client and the client's parent or guardian to determine if a transfer may be in the best interest of the client. The parent's or guardian's ideas about the transfer may be obtained by telephone or by mail if an interview cannot be arranged;

(c) if the interdisciplinary team decides to pursue a transfer, a transfer package be developed for the client and forwarded to the destination facility being considered. The transfer package shall consist of

(1) the request for transfer;

(2) a completed transfer data form (see Exhibit "D" which is attached to these rules);

(3) a current habilitation plan;

(4) one copy each of the most recent medical, psychological, and social evaluation and summaries; and

(5) a program summary conducted within the last 90 days.

If the interdisciplinary team believes a transfer is not in the best interest of the client, then current transfer planning will be terminated;

(d) the destination facility review the transfer package and indicate to the client's facility, by completing the transfer data form illustrated by Exhibit "E" which is attached to these rules, whether or not:

(1) the destination facility can provide habilitative services,

(2) an appropriate vacancy exists or is expected;

(e) if the destination facility indicates that appropriate placement is not available, the client's residential facility may:

(1) cancel the request for transfer;

(2) request the client be considered for the first available appropriate vacancy;

(3) try another destination facility;

(f) if the destination facility indicates that appropriate services, care, and treatment are available, the interdisciplinary team and the client, parent, or guardian, whichever is appropriate, should attempt to reach a consensus as to whether or not the transfer is in the best interest of the client and the interdisciplinary team will either confirm or cancel the request for transfer. The destination facility shall be notified of the decision;

(g) when the transfer is confirmed, the client's residential facility shall immediately:

(1) schedule a transfer date with the destination facility, and

(2) update the transfer package and send it to the destination facility;

(h) prior to date of transfer, the client's residential facility shall duplicate all pertinent records and establish a client record folder which will accompany the client to the destination facility. The record shall include, but is not limited to, copies of the following information:

(1) original state school application;
(2) birth certificate;
(3) legal documents;
(4) social security card or duplicate;
(5) picture taken within one year;
(6) immunization record;
(7) weight and height record;
(8) seizure record;
(9) medication, treatment, and diet record;
(10) medical examination and summary conducted within last 30 days;
(11) laboratory reports (urine, blood, x-ray, stool) conducted within the last 30 days;
(12) most recent Clinical Record System (CRS) forms;
(13) most recent program summary of the Behavioral Characteristics Progression (BCP);
(14) physician progress reports;
(15) personal items inventory (clothing, equipment, toiletries, and other such items);
(16) transfer program summary;

(i) on the date of transfer, the client's residential facility shall transport to the destination facility

(1) the client;
(2) the client record folder pursuant to subparagraph (h) of this rule;
(3) a 14-day supply of medication;
(4) all personal items of the client;

(j) all original records of the client being transferred shall remain at the client's residential facility as a permanent record.

.012. Client Tranfers: Regular Transfer of a Court Committed Client from a Texas Residential Facility for the Mentally Retarded to a Texas Residential Facility for the Mentally Ill. Regular transfer of a court committed client from a Texas residential facility for the mentally ill requires that

(a) a request for transfer (see Exhibit "D" which is attached to these rules) be completed by the client, his parent or guardian, an advocate, or the superintendent of the client's residential facility;

(b) the appropriate interdisciplinary team review the transfer request and client's needs and habilitation plan with the client, and the parent or guardian to determine whether a transfer may be in the best interest of the client. The parent's or guardian's ideas about the transfer may be obtained by telephone or letter, if an interview cannot be arranged;

(c) if the interdisciplinary team decides to pursue a transfer, a transfer package be developed for the client and forwarded to the committing court for consideration. The transfer package shall consist of the following:

(1) the request for transfer;
(2) a current habilitation plan;
(3) one copy each of the most recent medical, psychological, and social evaluation and summaries;
(4) certification by a professional team, including a signed statement by a licensed physician evidencing the diagnosis of mental illness;
(5) a program summary conducted within the last 90 days;

(d) the committing court shall be notified of the need for transfer and furnished the certificate referred to in subparagraph (4) of paragraph (c) of this rule, and an order approving the transfer shall be requested. No transfer under this rule shall be made without court approval. An example of a request for a court order is attached to these rules as Exhibit "F." An example of a court order approving such a transfer is attached to these rules as Exhibit "G."

(e) If the committing court enters an order approving the transfer, the client's residential facility shall immediately

(1) schedule a transfer date with the destination facility, and

(2) update the transfer package and send it to the destination facility. The court order approving the transfer shall be included in the transfer package;

(f) prior to the date of transfer, the client's residential facility shall duplicate all pertinent records and establish a client record folder which will accompany the client to the destination facility. The record shall include, but not be limited to, copies of the same information required in Rule .011(h) of these rules and the court order approving the transfer;

(g) on the date of transfer, the client's residential facility shall transport to the destination facility:

(1) the client;
(2) the client record folder established pursuant to paragraph (f) of this rule;
(3) a 14-day supply of medication;
(4) all personal items of the client;

(h) all original records of the client shall remain at the client's residential facility as a permanent record.

.013. Client Transfers: Regular Transfer of a Voluntarily Admitted Client from a Texas Residential Facility for the Mentally Retarded to a Texas Residential Facility for the Mentally Ill. Regular transfer of a voluntarily admitted client from a Texas residential facility for the mentally retarded to a Texas residential facility for the mentally ill requires that the client

(a) be discharged from the residential facility for the mentally retarded, and

(b) admitted to the residential facility for the mentally ill in accordance with the admission procedures for mental health facilities.

.014. Client Transfers: Regular Transfer of a Client from a Texas Residential Facility for the Mentally Ill to a Texas Residential Facility for the Mentally Retarded. Regular transfer of a client from a Texas residential facility for the mentally ill to a Texas residential facility for the mentally retarded must be made pursuant to the procedures specified in Rules .004-.009 of these rules; and with respect to persons who have been involuntarily committed to a Texas residential facility for the mentally ill, the provisions of Article 5547-75A, Vernon's Annotated Civil Statutes (Texas Mental Health Code).

.015. Client Transfers: Interstate Transfer of a Client between a Texas and Another State. An interstate transfer of a mentally retarded client between a Texas department facility and another state will be accomplished in accordance with the Rules of the Commissioner of MHMR Affecting Other Agencies and the Public, Interstate Transfer Rules and Procedures, 302.03.10.

.016. Client Furlough: Reasons for Furlough. Furlough of a client from a residential facility will be made only if it is in the best interest of the client. Reasons for furlough include the following:

(a) availability of programs, assistance, or both, required by the client which are not available at the current placement facility;

(b) placement of a client in a trial alternate placement to determine the client's ability to succeed there;
(c) short-term visits away from the facility.

.017. Client Furlough: Requirements for a Short-term Visit Away from a Residential Facility for the Mentally Retarded. Furlough of a client for a short-term visit away from the residential facility for the mentally retarded requires that

(a) the client's individual program plan specify that the type furlough being considered is in the best interest of the client;

(b) long-range and short-term objectives of such a furlough are contained in the client's individual program plan;

(c) plans have been made for appropriate care, treatment, or both, that is, medications, clothing, and other special instructions for the client while on furlough;

(d) a written agreement specifying responsibility of and for the client during furlough, length of furlough, and nature of furlough be developed and signed by the client, if capable of doing so, and the parent of a minor client or guardian of the client, if appropriate, or the person or facility receiving the client on furlough, and the residential facility for the mentally retarded.

.018. Client Furlough: Requirements for Furlough of a Client for Specific Programs, Assistance, or Both, or for a Trial Alternate Placement. Furlough of a client for specific programs, assistance, or both, or for a trial alternate placement requires that the facility provide documentation certifying that

(a) an interdisciplinary team has determined

(1) the type furlough being considered is in the best interest of the client, and

(2) the client possesses the necessary skills and abilities to benefit from the placement. When deficits in required skills exist and furlough is made, these deficits should be identified and a program for their removal developed as part of the client's individual program plan for furlough;

(b) an individual program plan for furlough has been developed which contains at least the following:

(1) client identifying information;
(2) developmental history;
(3) developmental assessment;
(4) statements of long-range goals;
(5) statements of short-term objectives with program assignments;
(6) mode of intervention to include frequency of staff contact;
(7) designation of responsibility to include other agencies providing services and to designate the facility staff person who will maintain liaison with other agencies involved with the client;
(8) date of individual program plan initiation;
(9) scheduled review dates which reflect at least a monthly program review by a member of the interdisciplinary team throughout the duration of the furlough;
(10) a memorandum of understanding signed by the client if he is capable of doing so, the parent of a minor client or guardian of the client, if applicable, facility staff, and staff from other agencies having direct service delivery responsibility;

(c) the client, parent, or guardian have been counseled on the relative advantages, disadvantages, and temporary nature of the furlough placement;

(d) the client has been accepted for admission into programs required by the individual program plan described in paragraph (b) of this rule.

.019. Client Furlough: General Provisions.

(a) Furlough of a client from a residential facility for the mentally retarded shall be for a maximum period of six months and is renewable up to five times if determined by an interdisciplinary team to be in the best interest of the client.

(b) Renewal of furlough placement requires again meeting the criteria and procedures for furlough of clients contained in Rules .016 and .017 and the development of a new or revised individual program plan for furlough.

(c) Furlough of a client beyond the three-year period specified in paragraph (a) of this rule requires the special approval of the superintendent of the residential facility for the mentally retarded from which the client was furloughed.

(d) Copies of all documents developed during the furlough period will be placed in the client's unit record at the residential facility for the mentally retarded from which the client was furloughed.

(e) The furlough of a voluntarily admitted client will be governed by the following rules:

(1) If the client is a minor and his parents or guardian voluntarily admitted him, and if the minor client's parents or guardian object to the furlough, such objection may operate as a withdrawal of the voluntary admission.

(2) If the client is an adult who voluntarily admitted himself or who was voluntarily admitted by his guardian, and if the adult client or his guardian objects to the furlough, such objection may operate as a withdrawal of the voluntary admission.

(3) If there is an objection in a situation described in subparagraph (1) or (2) of this paragraph (e), the superintendent shall pursue one of the following courses of action:

(A) the client may be retained and furlough planning terminated,
(B) the client shall be discharged, or
(C) a court commitment of the client may be initiated.

(f) Furlough to an ICF-MR facility requires compliance with these rules and Rules of Commissioner of MHMR Affecting Client (Patient) Care, Placement of Residents in Community Intermediate Care Facilities, 302.04.11.

.020. Client Furloughs: Temporary Furlough of a Voluntarily or Involuntarily Admitted Client from a Texas Residential Facility for the Mentally Retarded to a Texas Residential Facility for the Mentally Ill. Temporary furlough of a voluntarily or involuntarily admitted client from a Texas residential facility for the mentally retarded to a Texas residential facility for the mentally ill for treatment of a psychiatric disorder requires that the procedures specified in Rule .012 of these rules be followed, except that court approval is not required. Authority for temporary furlough is granted under Section 16 of Article 3871b, Vernon's Annotated Civil Statutes.

.021. Client Furloughs: Temporary Furlough of a Voluntarily or Involuntarily Admitted Client from a Texas Residential Facility for the Mentally Ill to a Texas Residential Facility for the Mentally Retarded. Temporary furlough of a voluntarily or involuntarily admitted client from a Texas residential facility for the mentally ill to a Texas residential facility for the mentally retarded requires that the procedures specified in Rule .008 of these rules be followed. Authority for temporary furlough is granted under Article 5547-79, Vernon's Annotated Civil Statutes (Texas Mental Health Code).

.022. Client Discharges: Reasons for Discharges. Discharge of a client from a residential facility for the mentally retarded will be made only if it is in the best interest of the client. Reasons for discharge include the following:

(a) the client no longer needs residential placement;

(b) the client is ineligible for state school placement;

(c) the client has demonstrated an ability to benefit from alternate placement and such placement is determined to be long-term;

(d) the client, and parent or guardian, if appropriate, no longer desire residential placement.

.023. Client Discharges: Requirements for the Discharge of a Client from a Residential Facility for the Mentally Retarded into Alternate Placement. Discharge of a client from a residential facility for the mentally retarded into alternate placement requires that

(a) an interdisciplinary team has determined that discharge is in the best interest of the client;

(b) during a furlough period, the client has demonstrated skills necessary for successful alternate placement independent of the residential facility for the mentally retarded;

(c) a discharge summary has been developed which contains at least the following:

(1) client identifying information;

(2) legal status of the client, including guardianship and legal competency;

(3) a summary of diagnosis and evaluation and progress while at the residential facility for the mentally retarded and while on furlough prior to discharge;

(4) current developmental assessment;

(5) statements of long-term and short-term objectives for the client;

(6) mode of obtaining objectives;

(7) designation of responsibility to include the client, parent, or guardian, and other agencies providing services, and to designate the person(s) or agencies who will provide follow-along services;

(8) signature of members of the interdisciplinary team recommending discharge;

(9) signature of the superintendent approving discharge.

.024. Client Discharges: Requirements for the Discharge of a Client from a Residential Facility for the Mentally Retarded Because the Client No Longer Needs Residential Placement. Discharge of a client from a residential facility for the mentally retarded because the client no longer needs residential placement requires that the criteria and procedures contained in paragraphs (a) and (c) of Rule .023 of these rules be met.

.025. Client Discharges: Requirements for the Discharge of a Voluntarily Admitted Client from a Residential Facility for the Mentally Retarded Because the Voluntarily Admitted Client, Parent, or Guardian No Longer Desires Residential Placement. Discharge of a voluntarily admitted client from a residential facility for the mentally retarded because the voluntarily admitted client, parent, or guardian no longer desires residential placement requires that the criteria and procedures contained in paragraph (c) of Rule .023 of these rules be met and documentation be provided that the voluntarily admitted client and the parent or guardian have been counseled on the relative advantages and disadvantages of discharge.

.026. Client Discharges: Contact and Follow-up Summary of Client Status and Progress to be Made Six Months After Discharge and Documented Within One Year; Re-admission After Alternate Residential Placement in the Community.

(a) Within one year from the date of discharge, the unit record of a client discharged from a residential facility for the mentally retarded will contain documentation of a six-month client contact and follow-up summary of client status and progress, or documentation of an attempt to make such a contact and follow-up summary.

(b) Clients discharged from a residential facility for the mentally retarded into alternate residential placement in the community who again require placement in a residential facility for the mentally retarded shall be admitted pursuant to Rules .004-.009 of these rules except that they shall be placed in top priority on the central waiting list.

.027. Exhibits.

(a) The following exhibits are attached to these rules:

(1) Exhibit "A"-- Application for Admission Form.

(2) Exhibit "B"-- Emergency Admission Application.

(3) Exhibit "C"-- Form 02.

(4) Exhibit "D"-- Request for Transfer Form.

(5) Exhibit "E"-- Transfer Data Form.

(6) Exhibit "F"-- Request for Court Order.

(7) Exhibit "G"-- Court Order Approving Transfer.

(8) Exhibit "H"-- Texas Department of Mental Health and Mental Retardation Approved Diagnostic Centers.

(b) A copy of any of the exhibits enumerated in paragraph (a) of this rule may be obtained from the Texas Department of Mental Health and Mental Retardation, Box 12668, Capitol Station, Austin, Texas 78711.

.028. References. Reference is made to the following statutes, department rules, and publicaton:

(a) Article 5547-201, Vernon's Annotated Civil Statutes;

(b) Article 5547-202, Vernon's Annotated Civil Statutes;

(c) Article 5547-203, Vernon's Annotated Civil Statutes;

(d) Article 5547-204, Vernon's Annotated Civil Statutes;

(e) Section 16, Article 3871b, Vernon's Annotated Civil Statutes;

(f) Article 5547-79, Vernon's Annotated Civil Statutes;

(g) Article 5561f, Vernon's Annotated Civil Statutes (Interstate Compact on Mental Health);

(h) Article 3871b, Section 22A, Vernon's Annotated Civil Statutes;

(i) Rules of the Commissioner of MH/MR Affecting Client (Patient) Care; Admissions, Transfers, Furloughs and Discharges-- State Mental Health Facilities, 302.04.23;

(j) Interstate Transfer, 302.03.10;

(k) ICF-MR Placement Rules, 302.04.11;

(l) *Manual on Terminology and Classification in Mental Retardation,* 1973, prepared by AAMD.

.029. Distribution.

(a) These rules shall be distributed to members of the Texas Board of Mental Health and Mental Retardation; assistant commissioners, deputy commissioners, directors and section chiefs of central office; superintendents and directors of all department facilities; and executive directors of all community mental health and mental retardation centers.

(b) The superintendents and directors and all department facilities shall disseminate the information contained herein to all appropriate staff members.

.030. Effective Date. These rules become effective after the expiration of 20 days from the day on which they are filed as adopted rules with the Texas Register Division of the Office of the Secretary of State. Upon the effective date of these rules, all other instructions, verbal or written, on this subject are rescinded.

Issued in Austin, Texas, on December 9, 1976.

Doc. No. 766496

Kenneth D. Gaver, M.D.
Commissioner
Texas Department of Mental
Health and Mental Retardation

Effective Date: December 29, 1976

Article 5115, Texas Civil Statutes (Jail Standards)

Art. 5115. Jails provided

The Commissioners Court shall provide safe and suitable jails for their respective counties, and shall cause the same to be maintained in good sanitary condition at all times, properly ventilated, heated and lighted; structurally sound, fire resistant and kept in good repair. Furthermore, they shall cause the jails in their respective counties to be kept in a clean and healthy condition, provided with water of safe quality and ample quantity and sewer disposal facilities in accordance with good sanitary standards, and provided with clean, comfortable mattresses and blankets, sufficient for the comfort of the prisoners, and that food is prepared and served in a palatable and sanitary manner and according to good dietary practices and of a quality to maintain good health. Such jails shall comply with the provisions of this Act and with the rules and procedures of the Commission on Jail Standards.[1]

SUITABLE SEGREGATION

The term "safe and suitable jails," as used in this Act, shall be construed to mean jails which provide adequate segregation facilities by having separate enclosures, formed by solid masonry or solid metal walls, or solid walls of other comparable material, separating witnesses from all classifications of prisoners; and males from females; and juveniles from adults; and first offenders, awaiting trial, from all classifications of convicted prisoners; and prisoners with communicable or contagious diseases from all other classifications of prisoners. Furthermore, the term "safe and suitable" jails shall be construed to mean jails either now or hereafter constructed, except that, in lieu of maintaining its own jail, any county whose population is not large enough to justify building a new jail or remodeling its old jail shall be exempt from the provisions of this Act by contracting with the nearest available county whose jail meets the requirements set forth in this Act for the incarceration of its prisoners at a daily per capita rate equal to the cost of maintaining prisoners in said jail, or at a daily rate mutually agreed to by the contracting counties.

No person suspected of insanity, or who has been legally adjudged insane, shall be housed or held in a jail, except that such a person who demonstrates homicidal tendencies, and who must be restrained from committing acts of violence against other persons, may be held in a jail for a period of time not to exceed a total of twenty-four (24) hours, during which period he shall be kept under observation continuously. At the end of the twenty-four (24) hour period, such person shall be released or taken to a hospital or mental hospital. Furthermore, for such temporary holding of each person suspected of insanity, or who has been legally adjudged insane, there shall be provided a special enclosure or room, not less than forty (40) square feet and having a ceiling height of not less than eight (8) feet above the floor. Furthermore, the floor and the walls of such enclosure shall be provided with a soft covering designed to protect a violent person, temporarily held therein, from self-injury or destruction. One hammock, not less than two (2) feet, three (3) inches wide and six (6) feet, three (3) inches long, made of elastic or fibrous material shall be provided in each such special enclosure.

SUITABLE SECURITY AND SAFETY

For the purpose of this Act, the term "safe and suitable jails" is further defined to mean jails which provide adequate security and safety

facilities by having separate cells or compartments, dormitories, and day rooms, of varying dimensions and capacities for prisoners confined therein, except that, if practicable, no one such cell or compartment shall be designed for confining two (2) prisoners only. Cells or compartments shall be designed to accommodate from one (1) to eight (8) prisoners each, and furthermore, such dormitories and day rooms shall be designed to accommodate not more than twenty-four (24) prisoners each. Furthermore, in each such jail there shall be provided individual one-man or one-woman cells to accommodate not less than thirty per cent (30%) of the total designated prisoner capacity of the jail and dormitory-type space may be provided to accommodate not more than forty per cent (40%) of the total designated prisoner capacity of the jail. All cells, compartments and dormitories for sleeping purposes, where each such cell, compartment or dormitory is designed to accommodate three (3) or more prisoners, shall be accessible to a day room to which prisoners may be given access during the day. Cells for one (1) prisoner only shall have a minimum floor area of forty (40) square feet and all other cells, compartments, dormitories and day rooms (including safety vestibule area) shall have a minimum floor area equal to eighteen (18) square feet for each prisoner to be confined therein. The ceiling height above finished floor shall be not less than eight (8) feet for any cell, compartment, dormitory or day room where prisoners are confined.

The term "safe and suitable jails," as used in this Act, is further defined to mean that, for reasons of safety to officers and security, the entrance and/or exit to each group of enclosures forming a cell block or group of cells and/or compartments used for the confinement of three (3) or more prisoners shall be through a safety vestibule having one (1) or more interior doors in addition to the main outside entrance door to such cell block, all arranged to be locked, unlocked, opened or closed by control means located outside of any such enclosure or cell block.

SUITABLE SANITATION AND HEALTH

The term "safe and suitable jails" is further defined to mean jails which provide adequate facilities for maintaining proper standards in sanitation and health. Each cell designed for one (1) prisoner only shall be provided with a water closet and a combination lavatory and drinking fountain, table and seat. Each cell, compartment or dormitory designed for three (3) or more prisoners, shall be provided with one (1) water closet and one (1) combination lavatory and drinking fountain for each twelve (12) prisoners or fraction thereof to be confined therein. Furthermore, all such cells, compartments and dormitories shall be provided with one (1) bunk, not less in size than two (2) feet, three (3) inches wide and six (6) feet, three (3) inches long, for each prisoner to be confined therein. Furthermore, each day room for the confinement of three (3) or more prisoners shall be provided with one (1) water closet, one (1) combination lavatory and drinking fountain and one (1) shower bath for each twelve (12) prisoners, or fraction thereof, to be confined therein.. Furthermore, each day room shall be otherwise suitably furnished.

The provision of this Act, as amended, shall become applicable to all jails upon its effective date. The standards prescribed by this Act are minimum standards only. The provisions of this Act are enforceable by the Commission on Jail Standards.[1]

Amended by Acts 1975, 64th Leg., p. 1283, ch. 480, § 15, eff. June 19, 1975.

[1] See art. 5115.1.

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4 OF 5

Texas Commission on Jail Standards

General 217.01.00

These rules are adopted under the authority of Article 5115.1, Texas Civil Statutes.

.001. Authority. Pursuant to the authority granted by the Commission on Jail Standards Act and the Administrative Procedure and Texas Register Act, the Commission on Jail Standards prescribes the following rules and procedures regarding the implementation and administration of the Commission on Jail Standards Act, and the procedures and practice before the Commission on Jail Standards.

.002. Objective. The intent of the commission is to provide written rules reflecting minimum standards for the construction, equipment, maintenance, and operation of county jails; for the custody, care, and treatment of inmates in county jails; and for programs of rehabilitation, education, and recreation in county jails; rules providing for the reasonable enforcement of such minimum standards; rules providing for consultation and technical assistance to local government officials with respect to county jails, including review and comment on plans for the construction and major modification or renovation of county jails; rules for regular inspections of county jails and reports from local government officials on the condition of each county jail; and rules of procedures and practices before the commission.

.003. Severability. If any provision of these rules be held invalid, such invalidity shall not affect other provisions which can be given effect without the invalid provision, and to this end, the provisions of these rules are declared to be severable.

.004. Forms. The forms set forth in the appendix are regulatory standards adopted for the purpose of implementing the Commission on Jail Standards Act, are to be filed with the commission, and have the same force and effect as rules.

.005. Scope of Rules. The rules shall govern all minimum standards for county jails and their inmates in the State of Texas, and the institution, conduct, and determination of all matters properly before the commission. They shall be reasonably enforced and shall not be construed to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission to enforce the substantive rights of any person.

.006. Opinions and Advice. Except as otherwise expressly stated herein, advice given, statements made, and opinions expressed orally or in writing by the staff or personnel of the commission in response to inquiries or otherwise shall not be considered regulatory standards of the commission and shall not be considered binding upon the commission in connection with any matter requiring the approval, consent, or adjudication of the commission.

.007. Captions of Rules. The captions of the rules are for convenience only. Should there be a conflict between the caption of a rule and the text of a rule, the text will control.

.008. Precedent. Because rules cannot adequately anticipate all potential specific factual situations and circumstances presented for action, determination, or adjudication by the commission, the nature of the action taken with regard to any matter or the disposition of any matter pending before the commission is not necessarily of meaningful precedental value, and the commission shall not be bound by the precedent of any previous action, determination, or adjudication in the subsequent disposition of any matter pending before it.

Definitions 217.02.00

These rules are adopted under the authority of Article 5115.1, Texas Civil Statutes.

.001. Definitions.

(a) "Act" or "Commission on Jail Standards Act" means Articles 5115 (as amended) and 5115.1, Vernon's Annotated Civil Statutes (H.B. 272, Acts of the 64th Legisture, Regular Session, 1975).

(b) "Administrative Procedure and Texas Register Act" means S.B. 41, Acts of the 64th Legislature, Regular Session, 1975.

(c) "Capacity" means the maximum number of persons the facility has been constructed to house without the addition of extra beds.

(d) "Commission" means the Commission on Jail Standards.

(e) "Contested case" is a proceeding, including but not limited to rulemaking and a hearing upon orders or actions of the commission, in which the legal rights, duties, or privileges of a party are to be determined by the commission after an opportunity for adjudicative hearing.

(f) "Control area" means an area or corridor in which control cabinets or remote control consoles are located for the purpose of unlocking, operating, and locking detention doors from a remote point outside the cell blocks.

(g) "Day room" means a secure area adjacent to an inmate living area, with controlled access from the inmate living area, to which inmates may be admitted for daytime activities such as dining, bathing, and selected recreation or exercise.

(h) "Detoxification cell" means a single cell, multiple-occupancy cell, or dormitory used to temporarily hold one or more chemically impaired persons during the detoxification process until they can care for themselves.

(i) "Dormitory" is an area equipped for accommodating nine to 24 inmates. In addition to water closets, lavatories, and bunks, the dormitory may include other design items not always found in single cells or multiple-occupancy cells, such as showers, tables, benches, and storage areas.

(j) "Executive director" means the executive director of the Commission on Jail Standards.

(k) "Facility" means a jail or lockup, including buildings and site.

(l) "Fire resistive" means a building complying with all requirements of Category 217.08.00, entitled Life Safety Rules.

(m) "High-risk inmates" are persons who cannot be allowed to mingle physically with other inmates without direct supervision, normally because of assaultive and aggressive behavior or high escape risk.

(n) "Holding room" means a cell used to hold one or more persons temporarily while awaiting processing, booking, court appearances, or discharge, or a cell or tank used to temporarily hold one or more persons until they can be moved to general housing areas after booking.

(o) "Inmate" means a person confined in a county jail or lockup.

(p) "Inmate corridor" means a secure corridor for the movement of inmates to and from functional areas, within the security perimeter.

(q) "Inmate living area" means a single-person cell, multi-occupancy cell, dormitory, or group of such cells or dormitories which provide accommodations for sleeping, approved personal effects, and personal hygiene.

(r) "Jail" means a facility that is operated by or for a county government for the detention of persons

for more than 48 hours, who are charged with or convicted of law violations.

(s) "Lockup" means a facility operated by a county government for detention for no longer than 72 hours of persons charged with or convicted of criminal offenses.

(t) "Low-risk inmates" are those inmates who are not considered dangerous or likely to escape.

(u) "Medium-risk inmates" are those persons requiring direct staff supervision and secure accomodations against escape, but who will be allowed to participate in group activities.

(v) "Multiple-occupancy cell" means a cell constructed for accommodating two to eight inmates. The multiple-occupancy cell is not defined as either a dormitory or single cell for purposes of computing jail capacity percentages.

(w) "Non-security facility" means a facility or area for low-risk inmates located outside the jail security perimeter.

(x) "Owner" as used in these standards means the commissioners court of the county in cooperation with the sheriff for the planning, staffing, and maintenance of the jail.

(y) "Party" means each person or the commission named or admitted as a party.

(z) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than the commission.

(aa) "Rule" means any commission statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the commission. The term includes the amendment or repeal of a prior rule, but does not include statements concerning only the internal management or organization of the commission.

(bb) "Saftey corridor" means a corridor between the perimeter walls of the cell block and the building walls.

(cc) "Safety vestibule" is a defined space that promotes security by the use of two or more doors and can be used to observe those who pass.

(dd) "Sally port" is a drive-through made secure be electrically or manually operated doors for entrance and exit. It is normally located in close proximity to the facility intaking area.

(ee) "Security area" means a defined space whose physical boundaries have controlled ingress and egress.

(ff) "Security perimeter" means the outer limits within the jail or lockup proper where personnel and equipment are used to prevent egress by inmates or ingress by unauthorized persons or contraband.

(gg) "Separation cell" means a cell used for temporary housing of a person who requires protection or whose behavior requires close supervision. This cell is equipped with an individual shower, water closet, table, seat, and other features necessary to permit an extended stay in the cell or room.

(hh) "Terminology." All of the terms used in these rules have the same meaning as defined in Section 2 of the Commission on Jail Standards Act. In addition, the commission may, from time to time, define and interpret certain terms, whether or not used in the act, insofar as the definition and interpretation are not inconsistent with the purpose fairly intended by the policy and provisions of the act.

(ii) "Violent cell" means a "padded" cell or room for temporary holding of a violent person, a person suspected of insanity, or one who is determined to inflict bodily harm to others or himself.

Rulemaking Procedures 217.03.00

These rules are adopted under the authority of Article 5115.1, Texas Civil Statutes.

.001. How Initiated. Proceedings for the promulgation, adoption, amendment, revision, or repeal of rules shall be initiated by a majority of the commission.

.002. Notice. Notice of the adoption, amendment, revision, or repeal of any rule shall be given as required by the Administrative Procedure and Texas Register Act.

.003. Opportunity to Be Heard. Prior to the adoption, amendment, revision, or repeal of any rule, the commission will afford reasonable opportunity to all interested persons to submit data, views, or arguments, orally or in writing. The commission or its staff, in its discretion, may use informal conferences and consultations as a means of obtaining the viewpoints and advice of interested persons, and it may appoint committees of interested persons or experts to advise it with respect to contemplated rulemaking. The powers of such committees shall be advisory only. In no event shall the commission take any action except in accordance with law.

.004. Petitions of Interested Persons. Any interested person may petition the commission requesting the adoption, amendment, revision, or repeal of any of its rules. Within 90 days after receiving such petition, the commission will initiate rulemaking proceedings or deny the petition in writing, stating its reasons for the denial. In order to receive consideration by the commission, the petition must set forth:

(a) the name of each petitioner and date of submission;

(b) the text of the proposed rule, amendment, or revision, and a brief explanation thereof;

(c) a statement of the statutory or other authority under which the same is proposed;

(d) a statement of the particular statute or statutes and sections thereof to which the same relates; and

(e) a concise statement of need and purpose of such rule, amendment, or revision, and the deficiencies of the existing rules concerning the situation made the subject of the petition.

.005. Validity. No rule hereafter adopted and no amendment, revision, or repeal of any rule shall be valid unless approved by a majority of the commission, unless adopted, amended, revised, or repealed in substantial compliance with these procedures, and unless indexed, filed, published, and made available for public inspection as required by law.

Construction Approval Rules 217.04.00

These rules are adopted under the authority of Article 5115.1, Texas Civil Statutes.

.001. Initial Contact. When the construction of the new facility or an addition to or the remodeling of an existing facility is being considered, the commissioners court or the administrator will notify the executive director and provide the executive director with an analysis of their needs and requirements of the project for review and opinion of concepts. When requested by the owner or sheriff, the executive director will assist in making an initial analysis of owner needs and programming the requirements of the project.

.002. Appointment of Architect. All new construction or extensive remodeling of facilities should be carried out under the terms of an agreement in the latest edition of AIA Document B141, entitled, "Owner-Architect Agreement," issued by the American Institute of Architects, or other mutually agreeable contract entered into between the owner and an architect or engineer licensed to practice in the State of Texas.

.003. Information Submissions. Information shall be furnished to the executive director or his authorized representative by the owner or owner's representative during the planning and construction stages of any facility. Complete submittals of all information presented to the owners, including an analysis of projected construction cost prepared by the architect under the direction of the sheriff, shall be made to the executive director in no less than five days after said submissions are made to the owner at the following stages of planning:

(a) on completion of the schematic design phase at the time schematic design studies illustrating the scale and relationship of project components and cost estimates are submitted to the owner for approval;

(b) on completion of the design development stage, when drawings and other documents to fix and describe the size and character of the entire project as to structural, mechanical, and electrical systems, life safety and detention locking systems, materials, cost estimates, and such other essentials as may be appropriate, are submitted to the owner;

(c) on completion of all construction documents including drawings and specifications setting forth in detail requirements for the construction of the entire project, including necessary bidding information and bidding forms and final cost estimates of construction cost and operation cost. These documents shall include the conditions of the construction contract or contracts and the form of agreement to be entered into between the owner and the contractor or contractors.

.004. Official Comments. Each time a submission is made, as required above in Rule .003, notification shall be given directly to the executive director by the sheriff and owner that they have reviewed the information furnished. In the event any element of the information submitted is objected to or disapproved by the sheriff or any of the members of the commissioners court, and if the sheriff or any member of the commissioners court desires for their position to be known to the executive director, written notification of their objection and reasons therefor shall be given to the executive director by the commissioner or sheriff at the time information is submitted.

.005. Approval. Within 30 days of receiving the contract documents as submitted by the owner, the executive director or his representative shall respond in writing with approval or disapproval of the building as complying with the minimum standards established by rules and procedures of the commission and Article 5115, Vernon's Annotated Civil Statutes, as amended. If approval is not given, an explicit description of the items which are not approved shall be given by the executive director, along with an explicit description of the remedy or remedies necessary. The executive director will send his reply directly to owner, sheriff, and architect.

.006. Addendums, Substitutions, and Changes. Copies of all proposed addendums prepared during the bidding phase shall be forwarded to the executive director prior to being issued. The executive director shall respond in writing, giving approval or disapproval promptly to architect, not longer than seven days after receiving said request. Modifications, changes, and all substitutions of material or equipment as an equal for those specified in the approved contract documents must receive written approval by the executive director prior to the change order or substitution approval being issued. Emergency approval of addendum, modifications, substitutions, or changes may be sought and obtained by telephone or telegraph from the executive director, who will subsequently issue a confirming answer in writing.

.007. Inspections. Final inspection of the completed facility to determine compliance with approved contract documents and jail standards shall be made before acceptance by the owner by a team including the executive director or his designated representative, the architect, a representative of the commissioners court, sheriff, and county officer or employee responsible for construction.

.008. Comment on Compliance. Within 10 calendar days after the final inspection, the executive director shall notify the owner whether or not the facility has met the standards and of any granted variances. The guidelines for compliance shall be the previously approved contract documents and standards established by rules and procedures of the commission and Article 5115, as amended.

.009. Occupancy. The facility shall not be occupied until the owner has received written statement of compliance with approved contract documents and jail standards from the executive director.

.010. Laws Applicable. The facility shall conform to the building, safety, and health requirements of state and local authority. State standards for a facility which exceed those of the local authority shall take precedence.

New Construction Rules 217.05.00

These rules are adopted under the authority of Article 5115.1, Texas Civil Statutes.

.001. Objectives. Any county contemplating construction or renovation of a facility shall determine the present and future needs and possible expansion of the existing or proposed facility. A clear definition of functions and objectives for the proposed addition, renovation, or new facility shall then be provided to the commission.

.002. Analysis. An analysis of facility population trends based on available data over a period of not less than the preceding five years should be made to determine anticipated capacity of facility components.

.003. Unfinished areas. Planning may provide for the construction of space for future expansion of inmate housing areas to increase the capacity of the jail. These areas may be constructed "shell only" for future installation of interior walls, equipment, and appurtenances. Such areas shall not in any way compromise the security of the total facility.

.004. Facilities. Jails shall be structurally sound and fire-resistive and shall provide adequate security and safety facilities by having single person cells, multiple-occupancy cells, dormitories, and day rooms of varying dimensions and capacities for inmates confined therein. Jails should also provide supporting facilities and equipment for safe, secure, and efficient operation of the jail.

.005. Space Allocation. Space shall be allocated for, but not be limited to, the following functions:

(a) inmate reception (see 217.09; 217.12)
(b) inmate processing (see 217.06; 217.09; 217.23)
(c) shakedown (see 217.06; 217.10; 217.14)
(d) inmate detention (see 217.06; 217.12; 217.14; 217.15; 217.18)
(e) adequate segregation of inmates (see 217.05; 217.07; 217.08; 217.09; 217.12)
(f) food service (see 217.06; 217.07; 217.17)
(g) attorney interviews (see 217.09)
(h) storage (see 217.15; 217.16; 217.17)
(i) visiting (see 217.06; 217.09; 217.25)
(j) public areas (see 217.05)
(k) booking (see 217.09; 217.10; 217.11)
(l) identification (see 217.09)
(m) dressing in and out (see 217.09; 217.10)
(n) sally ports (see 217.02; 217.05)
(o) guard stations (see 217.14)
(p) kitchens (see 217.05; 217.07; 217.16; 217.17)
(q) line up (see 217.05)
(r) laundry (see 217.05; 217.09; 217.15)
(s) inmate commissary (see 217.05; 217.22)
(t) inmate programs and activities (see 217.19; 217.20; 217.21; 217.22)
(u) counseling (see 217.20)
(v) medical examination and treatment (see 217.05; 217.09; 217.13)
(w) jail administrative office(s) (see 217.05; 217.11; 217.12; 217.13; 217.14; 217.16)
(x) conference area (217.05) and
(y) squad rooms (see 217.05)

It is permissible to use the same room or space allocation for more than one of the listed "functions" where such use will not deny any constitutional rights of inmates, custodial personnel, or the general public, and where such use will not impair the safety, security,

sanitation, or segregation of the facility. Functions (a) through (n) inclusive apply to jails and lockups; (o) through (y) inclusive apply to jails only.

.006. Site. The site should be of sufficient size to provide for the immediate facility and a reasonable projected expansion. A buffer zone around the buildings is desirable.

.007. Jail Operation Requirements. Unlike a state of federal prison where only sentenced and classified persons are received, processed, detained, and released on a scheduled basis, a county jail must be planned to receive unclassified persons, hold persons who are not tried or convicted, and allow for receiving, processing, and release of persons at all times. Design and construction of a jail and personnel assigned to it must permit efficient and secure performance of this type of operation if the best interests of the community and the inmates are to be served.

.008. Jail Security Requirements. Jail security should by planned to protect inmates from one another, protect custodial personnel from inmates, and deter or prevent escapes.

.009. Facility Operation. The design shall provide for the orderly flow of facility traffic through strategically located corridors of areas, eliminating all unnecessary cross traffic and undesirable contacts between differently classified types of inmates.

.010. Special Security. A jail or lockup shall be designed and maintained as a special security unit. When built in conjunction with other governmental functions, the integrity of the security perimeter shall not be compromised.

.011. Fire-Resistive. A jail lockup shall be of fire-resistive construction and not attached to a building that is not fire-resistive.

.012. Vermin Control. Facility constructions shall incorporate measures which protect aganinst the entrance of vermin into the institution and breeding or presence of vermin on the premises and retention of objectionable odors in living areas. Choice of materials and construction design shall contribute to satisfactory maintenance and housekeeping.

.013. Public Building. A jail of more than 20-inmate capacity shall not be located under, in, or on top of another building which has not been designed for security purposes. This does not preclude the redesign and renovation of existing structures not originally built for security purposes.

.014. Location. Where practical, separate jail buildings should be in near proximity to, or connected to, local courtrooms by a secure means of pedestrian passage. This provision does not apply to facilities housing only low-risk inmates.

.015. Inmate Traffic. Construction should provide for movement of an inmate or detainee into and out of the jail being accomplished without exposing the individual to contact with the public, avoiding the use of public corridors, public elevators, and other areas frequented by the public. Where possible, the same security should be provided in the courts building for movements of inmates to and from the court.

.016. Administrative Space. The facility shall provide sufficient space for administrative and clerical personnel. Adequate space for equipment and supplies shall be provided to meet established and projected needs. These spaces shall be located outside the inmate occupied areas.

.017. Conference Area. A conference area shall be conveniently located for general use. In jails which include law enforcement accomodations, the conference area may be included with conveniently located interrogation rooms.

.018. Squad Rooms. Locker space, water closets, lavatories, showers, and dressing rooms may be provided for custodial personnel, and, if provided, shall be located outside the security perimeter.

.019. Public Areas. Public areas of the facility shall be located outside the security perimeter. Public access to the building shall be through a main entrance. The public shall not have uncontrolled access to enter the security perimeter. A public lobby or waiting area with appropriate information signs should be provided for the comfort and convenience of the public, including sufficient seating, water closets, lavatories, drinking fountains, and public telephones. Public lobby location shall be so situated that it does not interfere with general office routine.

.020. Visiting Areas. Visitor accommodations shall be designed to provide flexibility in the degree of physical security and supervision commensurate with security requirements of variously classified inmates. A visiting area should be provided for visits from law enforcement officers, attorneys, clergy, and probation and parole officers.

.021. Vehicular Sally Port. A jail or lockup shall have a security sally port located inside or abutting on the building so designed that inmates may board or disembark from a transportation vehicle inside. Space shall be sufficient to accommodate anticipated transportation vehicles, including buses, where applicable. Facilities housing only low-risk inmates need not have such sally port.

.022. Inmate Entrance. The inmate entrance shall be from the security sally port through a safety vestibule into the processing area. This entrance shall allow for passage of a loaded ambulance cot between interlocking doors. The safety vestibule shall be designed and constructed to allow observation and identification of a person approaching the inmate entrance. Electronic surveillance equipment may be used.

.023 Weapon Storage. Separate secure storage space shall be provided for disposition of weapons at all entrances to all areas where the carrying of weapons is prohibited.

.024. Processing Areas. Jails and lockups shall have a processing area located inside the inmate occupied area but away from the inmate living areas and day rooms. The processing area shall be designed to readily permit the booking, shakedown, identification, and dressing of inmates. Processing areas should be provided with drinking fountains and water closets.

.025. Identification. Space shall be provided for photographing, fingerprinting, and carrying out identification procedures for inmates.

.026. Storage Area Capacities. Storage areas based upon facility capacity shall be provided as follows:

(a) for inmate property storage in jails, two cubic feet per inmate, excluding shelving, bins, and baskets; in lockups, adequate space for inmates' personal effects shall be provided;

(b) for inmate uniforms, towels, bedding, and linen: three cubic feet per inmate, excluding shelving, bins, and baskets;

(c) for inmate mattresses, off-floor storage in the amount of 5-1/4 cubic feet per mattress for 25 percent of total beds; and

(d) for evidence, adequate and secure storage of evidence shall be provided.

.027. Medical Supply Storage. Adequate secure storage for medical supplies and drugs shall be provided.

.028. Janitorial Storage Space. Adequate storage for janitorial and other supplies and adequate storage for equipment necessary to the operation of the jail shall be provided.

.029. Medical Space and Equipment. Space and equipment for medical examination, treatment, and convalescent care shall be provided in each jail, or a

written program shall be established and implemented for medical care comparable to that available to the community where the jail is located. (See Section 217.13)

.030. Infirmary. An infirmary is desirable and the construction of an infirmary should be considered for a jail having a capacity of 50 or more whenever it is anticipated that:

(a) emergency services may have to be rendered frequently;

(b) there is a high frequency of cases requiring recuperative or convalescent care;

(c) convalescent care cannot be provided by utilization of vacant single cells or dormitory units.

.031. Infirmary Components. When an infirmary is constructed, the following minimum components shall be included:

(a) nurses station;

(b) locked medication station with storage for individually filled prescriptions;

(c) utility room with sink and storage for nourishments, linen, and equipment;

(d) utility room with double tub sink and clinical service sink with flushing rim;

(e) 80 square feet of floor space per bed;

(f) At least one single-occupancy room or cell with 80 square feet of floor space;

(g) doors, through which patients and equipment are to be moved, of adequate width to allow turning of wheeled chairs and tables normally used in medical facilities;

(h) a lavatory with a gooseneck inlet and wrist controls accessible to each ward;

(i) janitor closet;

(k) additional elements as dictated by the health care program as required.

.032. Laundry Facilities. A laundry, or an acceptable laundry vendor contract, or both, shall be maintained to provide clean clothing, bedding, and supplies. Adequate separated space, commensurate with jail inmate capacity, shall be provided for soiled clothing storage, clean laundry storage and laundry supply storage. Where applicable, space shall be provided for washers, extractors, and dryers. (See Section 217.15.)

.033. Laundry Plumbing Facilities. A lavatory and water closet shall be provided in close proximity to the laundry.

.034. Commissary. Space appropriate to capacity of the jail should be provided for an inmate commissary, or a written program established for inmates to obtain supplies from a nearby store. (See Section 217.22.)

.035. Arsenal. An arsenal and gun locker(s) for the issuance, storage, and care of weapons shall be provided outside the security perimeter and shall be secure from access by unauthorized persons.

.036. Guard Stations. A guard station shall be provided on each floor of the facility where inmates will be housed overnight.

.037. Guard Station Security. Guard stations shll be locked and protected so as to be inaccessible to unauthorized persons. Where practical, a guard station should have a safe egress to a secure area.

.038. Monitoring System. Security areas may have an electronic monitoring system built in to assist in inmate supervision and so an inmate can advise the officer of emergency needs. (See Section 217.14.00.001)

.039. Television Monitoring. Where closed-circuit television is not included but is planned or anticipated, space and conduits should be provided so that the equipment can be installed without need for alteration of the physical plant.

.040. Detoxification Cells. A jail or lockup shall provide one or more detoxification single cells, multiple-occupancy cells, or dormitories which shall be designed for detention of persons during the detoxification process only. These cells shall include the following features and equipment:

(a) Seating. The detoxification cell shall be equipped with stationary benches or bunks no higher than eight inches above the floor.

(b) Floor drain. The detoxification cell shall be provided with one or more vandal-resistive flushing floor drains. The floor shall be properly pitched to drains and drains shall have outside water shutoffs and controls.

(c) Cell size. The size of detoxification cell shall be determined by the anticipated maximum number of persons received at any one time. A detoxification cell shall not accommodate more than 12 persons and shall have a minimum of 40 square feet for one person plus 18 square feet of floor space per additional person.

(d) The floor and wall materials shall be durable and easily cleaned.

(e) Supervision. The detoxification cell shall be constructed to facilitate supervision of the cell area and to materially reduce noise.

.041. Holding Rooms. One or more holding rooms shall be provided to temporarily detain inmates pending booking, court appearance, identification, housing assignment, or discharge. Holding rooms shall include the following features and equipment:

(a) Floor areas. Minimum floor area of a holding room shall be 40 square feet (for single occupancy). For occupancy by more than one person, add a minimum of 18 square feet per additional person. The floor shall be constructed of material which is durable and easily cleaned.

(b) Seating. Seating shall be sufficient to provide not less than 24 linear inches per person at capacity.

(c) Plumbing. A vandal-resistive water closet and lavatory shall be provided for each 12 inmates or increment thereof. Each holding room shall have at least one drinking fountain. Plumbing fixtures shall have outside water shutoffs and controls individually by cell. Permanent modesty panels shall be provided.

(d) Floor drains. A holding room shall have adequate floor drains.

.042. Separation Cells. A jail shall have one or more single-occupancy separation cells to temporarily house selected inmates for extended periods of time. Separation cells shall include the following features and equipment not normally included in other single-person cells:

(a) Area. Separation cells shall contain a minimum of 40 square feet of clear floor area.

(b) Plumbing. Separation cells shall contain vandal resistive water closet, lavatory, drinking fountain, and floor drain.

(c) Shower. Each separation cell shall contain a shower with outside shutoff and controls.

(d) Furnishings. Each separation cell shall have table, seat, shelf, clothes hooks, mirror, bunk and appropriate lighting to permit reading and shaving in the cell.

.043. Violent Cells. A jail shall have at least one and necessary additional single-occupancy rooms or cells for temporary holding of violent person or persons suspected of insanity. Violent cells shall include the following features and equipment:

(a) Size. The room or cell shall have not less than 40 square feet for clear floor space and a ceiling height of not less than eight feet.

(b) Furnishings. The cell shall be equipped with a hammock of an elastic or fibrous fabric designed to minimize its use to inflict self-injury and a flushing type floor drain with control outside the cell.

(c) Padding. Walls shall be completely padded to the ceiling and the floor shall be covered with a mateial to protect the inmate from self-injury. The type and quality of materials used for padding and floor covering shall be designed to prevent self-injury and have the capability of being cleaned.

.044. Painting. Washable paint may be used for untiled walls and metal work. Light colors with occasional bright accents are desirable. Paint shall be nontoxic and fire-resistive and in accord with Section 217.08.

.045 Emergency Storage. Storage shall be provided for a litter stretcher and first aid equipment. Litters and fresh first aid equipment shall be kept on hand at all times.

.046. Exercise Area. A secure exercise area shall be provided with all jails. This may be a rooftop exercise area, an outside exercise area, or included inside the facility.

.047. Multipurpose Rooms. A jail of more than 40 capacity shall have, in addition to any activity or day room area, one or more multi-purpose rooms for group assembly of inmates. The multi-purpose room may be used for religious service, education, group counseling, or other special uses.

.048. Kitchen. If food is to be prepared in a facility, a kitchen shall be provided. The kitchen shall be planned for efficient food preparation and receipt of supplies and storage. It shall be planned for removal of waste and garbage without seriously compromising the security of the facility.

.049. Kitchen Location. The kitchen shall be designed and located in the facility so it will not be used as a passageway for non-food handling staff, persons not associated with kitchen or food handling assignments, or the public.

.050. Kitchen Operations. In designing a food preparation and service area, planning shall allow for the following operations: receiving, storage, processing, preparation, cooking and baking, serving, dishwashing, cleaning, menu preparation and record keeping, staff personal hygiene, and maintenance. The following kitchen facilities and features shall be provided:

(a) Issue areas. Issue areas for fresh, dry, and frozen foods shall be adjacent to the kitchen.

(b) Floor. The kitchen floor shall be properly pitched to one or more floor drains. The junction between floors and walls shall be covered.

(c) Ordinances. Kitchens shall comply with all state and local health ordinances. (See 217.04.010)

(d) Light. Adequate natural or artificial light shall be provided on work surfaces in the kitchen where food is prepared and cooking and eating utensils are washed.

(e) Ventilation. Food service rooms shall be adequately ventilated to control disagreeable odors and moisture. Any opening to the outside shall be effectively screened and secured.

(f) Water. Adequate hot and cold running water under pressure shall be provided in the kitchen area. Hot water equipment shall be of sufficient size and capacity to meet the kitchen and other facility needs and consistent with public health standards.

(g) Storage. Adequate storage requirements for all kitchen operations and needs shall be provided.

.051. Dining Space. Provision may be made for group dining as well as segregated dining. Group dining should avoid concentrations of more than 24 inmates.

.052. Electrical Power and Lighting. Electrical installation shall meet the requirements set by the state or by any city, village, or township permitted by statute to adopt an ordinance providing standards for electrical work. In addition, a jail or lockup shall have:

(a) light controls, conduit and lighting fixtures inaccessible to inmates;

(b) lighted entrances and exterior perimeter during hours of darkness;

(c) sufficient electrical outlets for heated food carts if heated food carts are to be used in food service.

(d) inmate living areas shall be provided sufficient light for reading, shaving, and other normal activities. Housing and control areas shall be sufficiently illuminated at all times to provide continuous observation of inmates and to permit custodial personnel to perform necessary functions.

.053. Emergency Electrical Power. An emergency electrical power facility for quick recovery to maintain essential services, security, and safety should be provided to meet the life safety requirements. (See 217.08)

.054. Temperature Level. All mechanical equipment for heating, cooling, or air movement shall be designed to provide a temperature level between 65 degrees Fahrenheit and 85 degrees Fahrenheit in all occupied areas at all times. Mechanical equipment should be properly designed to offset rapid changes in temperature in communities where such changes are known to occur.

.055. Air Flow. Ventilation must be sufficient to admit fresh air and remove disagreeable odors. A sufficient number of windows capable of being opened, or an emergency mechanical ventilation unit, shall be provided in order to allow for sufficient ventilation in case of breakdown in the normal ventilation system or power failure.

.056. Public Observation. Architectural treatment shall be provided to preclude direct vision into an inmate occupied area from the outside public.

.057. Screens. Operable windows shall be equipped with insect and/or security screens. Security level of window materials in inmate occupied areas shall be equal to or greater than perimeter walls of the inmate occupied area to which windows might provide ingress or egress. Window and/or skylights should be provided. Window area shall be commensurate with the architectural expression of the facility, its location, and other related factors.

.058. Plumbing and Drainage. Plumbing work shall meet the requirements of state and local commercial plumbing codes. Water closets, showers, and lavatories used by inmates shall be of vandal-resistive type, except in housing for low- and medium-risk inmates. Hot water shall not exceed 110 degrees Fahrenheit at a lavatory or shower in the inmate living area. All plumbing to inmate areas shall have a quick shutoff valve or other approved means to prevent flooding.

.059. Flooding Protection. Floor drains in inmate housing areas shall be located to reduce the incidence of malicious tampering and flooding. Where practical, a drain shall be located in security corridors and not inside cells or day rooms. Drain covers shall be securely anchored with vandal proof screws to prevent inmates from using them as assault weapons.

.060. Sinks. Sufficient mop sinks with hot or cold water shall be located to reduce excessive passage back and forth through the security perimeter during performance of janitorial service. Janitor closets and similar areas shall be provided with a lockable door.

.061. Access Doors. Plumbing space, or any other mechanical space, shall have a lockable access door.

.062. Hose Bibbs. Hose bibbs shall be provided in plumbing access space or corridors.

Inmate Housing Rules 217.06.00

These rules are adopted under the authority of Article 5115.1, Texas Civil Statutes.

.001. Design Concepts. Innovative architectural concepts are encouraged to reduce problems of security and maintenance while creating a practical, safe, and healthful environment for staff and inmates. The use of proper design, construction, and equipment to promote the efficient utilization of custodial personnel is also encouraged.

.002. Classification. Safe and suitable jails shall provide adequate segregation facilities for segregation of different classifications of inmates, in accordance with the facility classification plan. (See 217.12)

.003. Dimensions. Single cells, multiple-occupancy cells, dormitories, and day rooms shall be not less than 8' 0" high from fininshed floor to ceiling and not less than 5' 6" wide from wall to wall.

.004. Single Cells. Single cells shall contain not less than 40 square feet of clear floor space exclusive of furnishings. Each cell designed for one person shall have a bunk, water closet, lavatory (capable of providing drinking water for inmate), table, and seat. Lighting shall be provided to permit reading, shaving, and normal activities within the cell. Single cells should comprise at least 50 percent of the total inmate capacity of the facility, but in no event shall comprise less than 30 percent of the total capacity of the facility. Facilities housing only low-risk inmates may have fewer than 30 percent single cells.

.005. Multiple-Occupancy Cells. Multiple-occupancy cells shall be constructed to accomodate two to eight inmates and shall contain not less than 40 square feet of clear floor space for one inmate, plus 18 square feet of clear floor space per each additional inmate. Each multiple-occupancy cell shall have a bunk for each inmate and a water closet and lavatory (capable of providing drinking water) for each group of eight inmates or increment thereof to be confined therein.

.006. Dormitories. Dormitories shall be designed to accomodate nine to 24 inmates and shall contain not less than 40 square feet of clear floor space for one inmate, plus 18 square feet of clear floor space per each additional inmate. Dormitories shall have a bunk for each inmate and a water closet and lavatory (capable of providing drinking water) for each group of eight inmates or increment thereof to be confined therein. Not more than 40 percent of the inmate capacity of the facility shall be designed for dormitories, except that facilities housing only low-risk inmates may have more than 40 percent of the inmate capacity designed for dormitories.

.007. Day Rooms. All inmate living areas shall be provided with day rooms. Day rooms should be designed to accommodate not more than eight inmates, but shall not be designed to accommodate more than 24 inmates. Day rooms shall have a water closet, lavatory (capable of providing drinking water), and shower for each group of eight inmates or increment thereof to be confined therein. Each day room may otherwise be suitably furnished with, but not limited to the following: seats and tables to accommodate the number of inmates to be confined therein, visiting facilities, dining facilities, and other activities. Sufficient lighting shall be provided for reading, recreation, and other similar activities.

.008. Safety Vestibules. Safety vestibules shall be provided for each inmate living area and day room used for confinement of two or more inmates within the security perimeter. Facilities housing only low-risk inmates need not provide safety vestibules.

(a) Safety vestibules shall have one or more interior doors and a main entrance door.

(b) All doors shall be arranged to be locked, unlocked, opened, or closed by control means located outside of the inmate living area and safety vestibule.

.009. Corridor Width. Corridors shall not be less than four feet wide.

.010. Control Areas. Facilities should be designed to provide a means for:

(a) control and supervision of inmates;

(b) inspection of housing areas;

(c) control and protection of heating, ventilating, windows, louvers, and equipment;

(d) location of floor drains outside inmate housing areas;

(e) location and protection of lighting;

(f) location and protection of fire-fighting equipment.

Control corridors and/or control areas for locating and protecting the controls for remote-operated doors should be provided where necessary. These areas are also for the purpose of providing safety and protection to operators of the equipment and for preventing unauthorized access to door controls.

.011. Emergency Operation of Doors. For emergency operation of all doors to single cells, multiple-occupancy cells, and dormitories, and to permit quick and orderly release of inmates in the event of electrical malfunction, fire, smoke, or other emergency, mechanical means shall be provided outside the inmate living area for unlocking all cell doors. The mechanical means should also provide for completely opening sliding cell doors. (See 217.24)

.012. Audible Communication. Provision shall be made for communication between inmates and custodial personnel at all times.

.013. Construction Materials. Inmate living areas and day rooms shall be constructed of metal, masonry, concrete, or other comparable materials. The purpose of a particular wall or partition and the type of security sought to be achieved should determine the selection of appropriate materials.

.014. Detention Doors. Hollow metal doors shall be constructed of 12- to 14-gauge steel in security areas. Eighteen-gauge hollow metal doors may be used in non-security areas. Plate doors, where used, shall be constructed of material not less than 3/16" thick. Tool-resisting steel plate doors, where used, shall be constructed of material not less than 1/4" thick. Grating doors shall be constructed of the same type grillwork as the walls in which they are installed. Consideration shall be given in the design of all doors so that the direction of opening and the material of which these are constructed will not reduce or compromise the security sought to be achieved. Detention-type doors shall be equipped with detention-type hardware and accessories.

.015. Walls. Walls should be constructed so as to resist vandalism. Walls shall be designed with due consideration to the security and other functions sought to be achieved. Open decorative grillwork may be used to facilitate ventilation, temperature control, observation, and audible communication.

.016. Floors. Floors should provide a high resistance to wear from normal use. The surface should be so finished as to present a reasonably uniform appearance under conditions of normal wear and maintenance. Floors should be constructed of materials which withstand ordinary floor maintenance chemicals. Where hollow metal, grillwork, or plate walls join the floor, their supports should be treated so as not to react to water or floor cleaning chemicals. Equally acceptable is a curb approximately three inches high provided underneath such walls. In all instances, where walls join floors, the joint should be at such a curve or angle as to permit easy cleaning.

.017. Ceilings. Ceilings should be constructed of material not easily damaged by vandalism.

.018. Remote Controls for Dormitories, Day Rooms, and Safety Vestibules. Sliding doors, if used, for safety vestibules, dormitories, and day rooms shall be so arranged as to be locked, unlocked, opened to the full-open position, and closed by control means located outside of the safety vestibule or inmate living area and day room. (See 217.24)

.019. Furnishings. All single cells, multiple-occupancy cells, and dormitories shall be provided with one bunk not less than 2' 3" wide and 6' 3" long for each inmate to be confined therein. Bunks shall be securely

anchored and constructed of fireproof material. Secure anchorage for bunks is not required in facilities housing only low-risk inmates. Additional furnishings may include shelves and clothes hooks for each inmate, tables and seats, lockers, mirrors, detention-type electric light fixtures, detention-type heating and ventilating grilles, and showers. Where light fixtures or other appurtenances are recessed in or otherwise made an integral part of walls or ceiling, provisions should be made to prevent destruction or removal of the fixture by inmates confined in the area.

.020. *Tables and Benches.* Tables and benches should be constructed of materials to reduce maintenance. They shall be fireproof and securely anchored. Benches shall be not less than 1' 6" wide, securely anchored to floor or wall surfaces. Linear seating dimensions shall be not less than 18 inches per person to be seated on the bench simultaneously. Table and benches need not be anchored in facilities housing only low-risk inmates.

.021. *Shields.* Toilet and shower shields should extend from about 15 inches above finished floor to a height of about 5' 6" and shall be securely anchored.

.022. *Showers.* Shower areas shall be not less than 2' 6" square per showerhead and not less than seven feet high. Construction should be of materials which resist the action of soap and water and cannot be easily damaged by acts of vandalism. Drying areas of not less than 2' 6" square sloped to a drain should be provided adjoining the shower entrance.

.023. *Light Fixtures.* Electric light fixtures in cells, dormitories, and day rooms shall be commensurate with security application and provide sufficient light for reading, shaving, and other normal activities. Except in facilities housing only low-risk inmates, design and construction of fixtures should permit servicing from exterior of cell, dormitory, or day room. Where receptacle cannot be serviced from exterior of cell, electrical recepticles should be key front type.

.024. *Observation Lighting.* Housing and control areas shall be sufficiently illuminated at all times to permit continuous observation of inmates and to permit custodial personnel to perform necessary functions.

.025. *Vent Grilles.* Vent grilles in walls and ceilings of cells, dormitories, and day rooms shall be commensurate with security application. Vent grilles shall be securely welded or riveted to steel plate construction and securely anchored where used in concrete, masonry, or other construction.

.026. *Windows and Screens.* Window and screen construction shall not reduce the security level of adjacent wall construction and shall be securely anchored therein.

.027. *Food Passes.* Where used, food passes shall be not less than 15 inches wide and 4-1/2" high. Where deemed necessary, lockable shutters should be provided to prevent passage of contraband.

.028. *Observation Panels.* When used, observation panels shall provide a clear opening of not less than 5" x 8" and be glazed with appropriate thickness security glass or equivalent.

.029. *Visitor Communication.* Means shall be provided for audible communication between visitors and inmates, designed to prevent passage of contraband where high- and medium-risk inmates are involved.

.030. *Shutters.* Shutters should be provided for observation panels.

.031. *Mirrors.* Mirrors shall be constructed of unbreakable material.

.032. *Shelves.* Shelves and clothes hooks shall be provided for each bunk.

.033. *Key Cabinets.* Key cabinets should be provided at suitable locations.

.034. *Key Locks.* Where used, detention-type keyed locks shall be manufactured especially for detention use.

.035. *Electro-Mechanical Locks.* Electro-mechanical keyed locks, where used, shall be motor or solenoid type, providing electrical pushbutton unlocking, key unlocking by manual operation, and automatic mechanical deadlocking of door upon closing. Electric pushbutton control, indicator light, door position switch shall be provided for all doors equipped with electro-mechanical locks. Heavy duty detention-type door closers shall be provided on all swinging doors equipped with electro-mechanical locks.

.036. *Keys.* Keys for detention-type locks shall be heavy duty and of a sufficient size to prevent easy concealment and/or unauthorized duplication.

.037. *Hinges.* Hinges for heavy-duty detention doors shall be heavy-duty ball-bearing type designed especially for such doors.

.038. *Hand Pulls.* Hand pulls shall be securely anchored to the door.

.039. *Door Stops.* Appropriate door stops shall be provided for detention-type door.

.040. *Door Closers.* Where used, door closers for all detention-type swinging doors shall be heavy-duty types.

.041. *Maintenance.* Maintenance of detention equipment should be accomplished by experienced personnel designated by the sheriff or contracted for by the county, or both, to maintain all detention equipment in safe, secure, and fully operative condition at all times. Mantenance should be performed in accordance with methods recommended by manufacturer of such equipment.

.042. *Inmate Maintenance Prohibited.* Maintenance of locking systems and other security detention devices shall not be performed by inmates.

Existing Facilities Rules 217.07.00

These rules are adopted under the authority of Article 5115.1, Texas Civil Statutes.

.001. *Jail Facilities.* A jail shall consist of one or more single cells and may include multiple-occupancy cells or dormitories. It shall contain necessary space for administrative personnel, areas designated for booking, identification, consultation, and visitation and, where applicable, space for kitchen facilities for fresh, dry, and frozen foods, and a general purpose room.

.002. *Lockup Facilities.* A lockup shall consist of one or more single cells and may include multiple-occupancy cells or dormitories, for the temporary custody of inmates (not to exceed 72 hours) awaiting court appearance or transfer to jail. It shall be of a size sufficient to accomodate the needs of its daily operation and shall be attached to the principal administrative office of the administrator. Food for inmates may be prepared in other than a lockup kitchen but shall be in the amount prescribed by rules governing jails.

.003. *Fire Resistive.* The facility shall be of fire-resistive construction.

.004. *Cell Areas.* Single (one-person) cells shall have not less than 40 square feet of floor space and multiple-occupancy cells and dormitories shall have no less than 40 square feet of floor space for one inmate and 18 square feet of floor space per additional inmate for two or more inmates.

.005. *Single Cell and Dormitory Distribution.* Except in facilities housing only low-risk inmates, single cells shall comprise no less than 30 percent of the capacity of the facility, and dormitories shall not house more than 40 percent of the total capacity of the facility, except in facilities housing only low-risk inmates where less than 30 percent single cells and more than 40 percent dormitories may be permitted.

.006. *Screens.* Operable windows shall be equipped with insect and/or security screens.

.007. *Emergency Access.* A jail not located entirely on the ground floor shall have an elevator or other passageway large enough to accomodate an ambulance cot.

.008. *Floor Drains.* Kitchens, corridors, dormitories, cell areas, drunk tanks, and padded cells shall have floor drains in good working condition.

.009. *Exercise Area.* A secure exercise area shall be provided with all jails. This may be a rooftop exercise area, an outside exercise area, or included inside the facility.

.010. *Fire Regulations.* The facility shall conform with the regulations of the state fire marshal. (217.08)

.011. *Electric Wiring.* Electrical wiring shall meet statutory inspection requirements.

.012. *Dropcords.* Dropcords or extension cords shall not be permitted within the security perimeter.

.013. *Light Controls.* Light controls shall be out of reach of inmates.

.014. *Lighting.* Inmate living areas shall be provided sufficient light for reading, shaving, and other normal activities. Housing and control areas shall be sufficiently illuminated at all times to provide continuous observation of inmates and to permit custodial personnel to perform necessary functions.

.015. *Exterior Lighting.* Exteriors of buildings shall be lighted at night.

.016. *Emergency Power.* Emergency electrical power facilties shall be provided.

.017. *Temperature Level.* All mechanical equipment for heating, cooling, or air movement shall be designed to provide a temperature level between 65 degrees Fahrenheit and 85 degees Fahrenheit in all occupied areas at all times. Mechanical equipment should be properly designed to offset rapid changes in temperature in communities where such changes are known to occur.

.018. *Ventilation.* Ventilation shall be adequate to maintain fresh air consistent with health requirements.

.019. *Plumbing.* Plumbing shall meet statutory inspection requirements and shall be in good operating condition. Except in facilities housing only low-risk inmates, it shall be of a type designed for jail or prison use.

(a) Each cell designed for one inmate shall be provided with a water closet and lavatory (capable of providing drinking water for the inmate).

(b) Each multiple-occupancy cell or dormitory shall be provided with one water closet and lavatory (capable of providing drinking water) for each 12 inmates or increment thereof to be confined therein.

(c) Each day room for the confinement of two or more inmates shall be provided with one water closet and lavatory (capable of providing drinking water) and shower bath for each 12 inmates or increment thereof to be confined therein.

.020. *Segregation.* Adequate segregation facilities shall be provided by having separate enclosures for separating inmates in accordance with the classification plan of the facility. (See 217.12)

.021. *Ceiling Height.* The ceilings in single-person cells, multiple-occupancy cells, dormitories, and day rooms shall be not less than eight feet high.

.022. *Day Rooms.* Day rooms shall be provided for all inmate living areas. Day rooms shall not accomodate more than 24 inmates. Day rooms shall be suitably furnished.

.023. *Bunks.* All inmate living areas shall be provided with one bunk, not less than 2' 3" wide and 6' 3" long, for each inmate confined therein for more than 72 hours.

.024. *Safety Vestibules.* Except in facilities housing only low-risk inmates, the entrance and/or exit to all living areas and day rooms shall be through a safety vestibule. These safety vestibule doors shall be locked, unlocked, opened, or closed by control means located outside of the inmate living area.

.025. *Violent Cell.* For temporary holding of inmates suspected of insanity or who have been legally adjudged insane, there shall be provided a special enclosure or room not less than 40 square feet having a ceiling height of not less than eight feet above the floor. The floor and the walls of such enclosure shall be provided with a soft covering designed to protect a violent person from self-injury or destruction. One hammock, not less than 2' 3" wide and 6' 3" long, made of elastic or fibrous material shall be provided in each such special enclosure.

.026. *Maintenance.* Maintenance of detention equipment should be accomplished by experienced personnel, designated by the sheriff, or contracted for by the county, or both, to maintain all detention equipment in safe, secure, and fully operative condition at all times. Maintenance should be performed in accordance with methods recommended by manufacturer or vendor of such equipment.

.027. *Inmate Maintenance Prohibited.* Maintenance of locking systems and other security detention devices shall not be performed by inmates.

.028. *Variances.* In existing facilities where specific standards cannot be complied with because of alleged difficulty or undue hardship, exceptions to specific physical plant provisions of the standards may be made where clearly justified if the intent of the standards is met and the security or supervision of inmates, established programs, and the safe, healthful, sanitary, and efficient operation of the facility is not seriously affected. The procedure for requesting and granting variances shall be the same as that prescribed under Category 217.26.

.029. *Applicability.* The provisions of this Category 217.07 apply only to facilities existing and being operated as county jails or lockups on December 23, 1976.

Life Safety Rules 217.08.00

These rules are adopted under the authority of Article 5115.1, Texas Civil Statutes.

.001. *National Life Safety Code.* Where applicable, the requirements of the National Life Safety Code, as it relates particularly to penal institutions (Section 10-3), Classification of Occupancy (Section 4-1), and Hazard of Contents (Section 4-2), shall govern construction and be implemented in county jails and lockups.

.002. *Occupancy Classification.* Each area in a jail facility serves a definite and different purpose. There will be represented in most jails an example of nearly all occupancy type classifications. Exits and other life safety features shall be determined by the type of occupancy classification and the hazard of occupancy.

.003. *Building Classification.* All buildings and structures shall be classified using Section 4-1 of the National Life Safety Code as a guide, subject to the ruling of the executive director as to proper classification of any individual building or individual area within the jail.

.004. *Institutional Buildings.* Institutional buildings for purposes of life safety classification are those used principally for care of persons under security measures not under the occupants' control. In the National Life Safety Code, these buildings are identified as Group C, residential, restrained-care penal insitutions, reformatories, and jails. Certain areas within these buildings must have special life safety provisions which are

applicable to the care of persons suffering from physical or mental illness, disease, or infirmity.

.005. Special Life Safety Provisions. Special life safety provisions shall be provided for persons suffering from a physical or mental illness, disease, infirmity, or other convalescent disability in jail. It will be assumed that such persons will be housed in the jail for only a short period of time and then transferred out of the classification of residential-restrained care to residential-custodial care institutions such as homes for the aged, mentally retarded care institutions, nursing homes, or detoxification facilities.

.006. Hazard of Contents. For purposes of this standard, the hazard of contents shall be the relative danger of smoke or gases generated by fire or heat, the relative danger of the start and spread of fire, the danger of explosion, the danger of any or all of these hazards in conjunction with a riot by a few persons, or other occurrence potentially endangering the lives and safety of the occupants of the jail building or detention areas within the jail.

.007. Determination of Hazard of Contents. Hazard of contents shall be determined by the executive director on the basis of the character of contents and the processes or operations conducted in various areas of the jail. Where the flame-spread rating or smoke- or gas-generating rating of the interior finish or other materials utilized in the building or structure are such as to involve a hazard greater than the hazard of contents, the greater degree of hazard shall govern. Where different degrees of hazard of contents exist in different parts of a jail, the most hazardous shall govern classification except insofar as hazardous areas are segregated or protected from other less hazardous areas.

.008. Low-hazard Contents. Low-hazard contents are those of such low combustability that no self-propagating fire therein can occur and that, consequently, the only probable danger requiring the use of emergency exits will be from panic, fumes, smoke, or fire from some external source.

.009. Ordinary-hazard Contents. Ordinary-hazard contents shall be classified as those which are liable to burn with moderate rapidity or to give off a considerable volume of smoke, from which neither poisonous fumes nor explosions are to be feared in case of fire.

.010. High-hazard Contents. High-hazard contents shall be classified as those which are liable to burn with extreme rapidity or from which poisonous fumes or explosions are to be feared in the event of fire. Any area which could be easily barracaded by a few inmates and subjected to the willful burning of ordinary-hazard contents shall be considered a high-hazard content area for purposes of this life safety standard.

.011. Means of Egress. Reliable means shall be provided to permit the prompt release of inmates confined in locked sections, spaces, or rooms in the event of fire or other emergency, regardless of the hazard of contents.

.012. Hazardous Areas. Every hazardous area shall be protected in accordance with Section 10-1371 of the National Life Safety Code. In any living area where the hazard of contents is classified as low, ordinary, or high, all doors to cells in inmate living areas shall be provided with a manual means operated from outside the living area to unlock all cell doors. The manual means should also move fully open and lock open all sliding cell doors.

.013. Emergency Security Doors. Emergency sliding security doors shall also be located at openings in inmate corridors and in outside walls so as to permit quick egress from an area assuming fire and dense smoke to be present.

.014. Fire-Fighting Equipment. Fire extinguishers as well as hoses and water supply shall be located so as to permit quick deployment to inmate living areas. All fire-fighting equipment shall be out of reach of inmates, in safety corridors, or otherwise secured from unauthorized use or tampering.

.015. Use of Hazardous Materials. Construction materials as well as furnishings and fittings for all inmate housing areas shall consist of noncombustable or low-hazard materials only. Ordinary-hazard contents and high-hazard contents, including but not limited to those materials capable of giving off a considerable volume of smoke, producing toxic smoke, or burning with extreme rapidity when subjected to fire or heat, will not be permitted in construction materials or furnishings in inmate housing areas.

.016. Smoke and Fume Removal. Provisions shall be made for high-velocity removal of smoke or fumes from each inmate living area. The hazard of contents and classification of each area of the jail will determine the degree of hazard and the removal methods necessary.

.017. Security of Emergency Exits. All emergency egress construction and procedures shall be planned to prevent escape of inmates during evacuation.

.018. Maintenance of Life Safety Equipment. All equipment intended for life safety use shall be regularly inspected and maintained by a designated experienced maintenance mechanic or contracted by the owner with a private agency under an acceptable vendor contract, or both, to maintain all life safety equipment in safe, secure, and fully operative condition at all times.

.019. Control and Deterrence of Riots. Protected vantage points affording access to areas of inmate living and day rooms, from which custodial personnel can act to quell riots and other disturbances should be provided.

.020. Approval of Life Safety Provisions. Life safety provisions complying with this standard shall be submitted with other new construction plans or renovation plans as required in Rule Category 217.04.

.021. Variances. The procedure for requesting and granting variances shall be the same as that prescribed under Rule Category 217.26.

Admission of Inmates to County Jails 217.09.00

These rules are adopted under the authority of Article 5115.1, Texas Civil Statutes.

.001. Receiving. The receiving officer should determine that each inmate is being committed by a duly authorized officer. If only one corrections officer is on duty, the delivering officer should stay until the inmate is locked into the facility.

.002. Identification. Each inmate should be fingerprinted and photographed when appropriate.

.003. Cooperation with Other Authority. Copies of the fingerprints should be forwarded to the proper state and federal authorities.

.004. Information about Inmates. During the receiving procedure, information shall be obtained for the inmate's medical record (217.13.00.004) and the facility's records, including the following: name of inmate with aliases, description, sex, marital status, address, date of birth, offense charged, date of commitment and authority therefor, previous criminal record, name, address, and phone number of person to be contacted in event of emergency, the name of the delivering officer, and the arresting agency.

.005. Health Tags. Any "health tags" which may identify the inmate as having heart trouble, diabetes, epilepsy, or other such chronic illnesses shall be noted in the inmate's medical record and brought to the attention of health personnel.

.006. Inmate File. An individual file on each inmate shall be established on intake. A copy of all documents that purport to legally authorize the inmate's commit-

ment shall become a part of the inmate's record, along with information obtained under Rules .004 and .005 above.

.007. Observation During Holding. Inmates confined in a holding cell awaiting processing, booking, classification, or who are under the influence of alcohol or other chemical substance and being held during the sobering process, shall be observed at frequent intervals by jail personnel.

.008. Bonding. Before classification and assignment to specific housing, the inmate shall be given the opportunity to secure his release utilizing the bonding procedures available in the county or district.

.009. Telephone Use. A telephone and telephone directory should be available within the security area of the detention facility. Immediately after a person is booked in and no later than four hours after his arrival at the facility, a person shall be permitted to make, at his own expense if able, in the presence of a public officer or employee, at least two telephone calls from the facility, completed to the person called, who may be his attorney, employer, a relative or friend, a personal bond office representative, and/or a bail bondsman. A toll call must be made at the inmate's expense or on a "collect call" basis. Pay telephones may be used but an inmate should not be deprived of the right to make these telephone calls because of lack of funds. A facility may have a special line reserved for inmate use utilizing a staff member to place the call.

.010. Contacting Attorney. The inmate should be advised that he will be allowed to contact any attorney upon reasonable request.

.011. Inmate Property Checking. If an inmate is not going to be released, the receiving officer shall carefully record and store such of the inmate's property as is taken from him and issue the inmate a receipt, signed by the receiving officer and the inmate, to be kept in the inmate's file pending release.

.012. Search. All inmates upon admission shall be thoroughly searched for weapons and any contraband.

.013. Record of Injuries. A record of any injuries should be made immediately.

.014. Communicable Disease. Inmates suspected of having any type of communicable disease shall be isolated and immediate arrangements must be made for their transfer to a facility equipped to handle the suspected disease, unless the admitting facility can safely and effectively segregate and maintain a medically prescribed course of treatment.

.015. Shower. A shower and change of facility clothing should be given each inmate admitted; the inmate's shower upon admission should be supervised by a corrections officer to assure the inmate's cleanliness. Only females shall supervise females inmates. Only males shall supervise male inmates.

.016. Strip Search. Inmates should have a thorough strip search which should include a check for body vermin, cuts, bruises, needle scars, and other injuries. Only females shall conduct such a search of female inmates. Only males shall conduct such a search of male inmates.

.017. Bedding. On completion of the receiving procedure, the inmate shall be given clean bedding, towel, and other necessary toiletry items.

.018. Rules Posted. A copy of detention facility rules and regulations shall be posted or otherwise made available to each inmate in Spanish and English; the same shall be read to illiterate inmates.

.019. Community Contact. An effort should be made to provide for liaison between inmates, their families, and other social service organizations and agencies, if available in the community.

Release of Inmates from County Jails 217.10.00

These rules are adopted under the authority of Article 5115.1, Texas Civil Statutes.

.001. Identification. The releasing officer should determine inmate identity before discharge or release is effected.

.002. Authorization. The releasing officer should be certain that authorized release papers have been presented for the release of the inmate.

.003. Search. All inmates being discharged to other custody shall be searched.

.004. Record. A record should be kept of the release order and the time of release.

.005. Property Return. All inmates being released or discharged from the detention facility should sign a receipt for property returned. In the event an inmate refuses to sign the property return receipt, the releasing officer, with a witness present, should note the refusal and sign the receipt.

County Jail Records and Procedures 217.11.00

These rules are adopted under the authority of Article 5115.1, Texas Civil Statutes.

.001. Record System. The sheriff shall establish a records system for the detention facility which includes:

(a) a daily record of the number of inmates in the detention facility;

(b) a record on each inmate, including information obtained during admission, all classifications given him, personal property receipts, commitment instructions, transfer orders, release orders, date of booking and release, disciplinary actions, unusual occurrences, and any other information relating to the inmate's confinement;

(c) a record of receipts and expenditures of money for each inmate's account; and

(d) a separate written record of all incidents which result in physical harm, or serious threat of physical harm, to an employee or inmate of a facility or other person. Such record shall include the names of the persons involved, a description of the incident, the actions taken, and the date and time of the occurrence. Such a written record shall be prepared and submitted to the sheriff within 24 hours of the event of an incident.

.002. Fiscal. Each sheriff should maintain fiscal records which will clearly indicate the costs for his facility. Such records should include feeding and clothing outlay and other program costs.

.003. Continued Authority to Hold Inmates. Each sheriff should develop a procedure to obtain all court orders relating to the continued custody and/or release of each inmate.

Classification and Separation of Inmates 217.12.00

These rules are adopted under the authority of Article 5115.1, Texas Civil Statutes.

.001. Inmate Safety. A person arrested shall be confined or separated in a facility in the following manner:

(a) prior to and during processing into a facility, arrested persons shall be under direct staff supervision;

(b) following processing, housing separation shall be provided to assure the health and safety of each detained; and

(c) a person confined to a detoxification cell shall be moved to a general housing area as soon as he can properly care for himself.

.002. *Classification Plan.* Each sheriff shall develop and implement a written classification plan which shall contain provisions for the following:

(a) the separation and assignment of inmates to living areas and activities after considering the following factors: sex; age; criminal sophistication; seriousness of crime charges; assaultive, nonassaultive or passive tendencies; history of mental illness; evidence of suicidal tendencies; all other criteria such as will provide for the safety of the prisoners and staff;

(b) an appeal of one's classification to the sheriff;

(c) a periodic review of inmates' classifications;

(d) the maintenance of records of inmates' classifications, appeals, reviews, and disposition;

(e) the separation of witnesses not charged with crime from all other inmates;

(f) the separation of male inmates from the sight and sound of female inmates;

(g) the separation of juveniles (if detained in facility) from the sight and sound of adult inmates;

(h) the separation of inmates with communicable or contagious diseases from all other inmates;

(i) the separate housing of persons suspected of insanity or who have been legally adjudged insane, and persons who have demonstrated homicidal tendencies and who must be restrained from committing acts of violence against other persons, which persons shall be kept under continuous observation;

(j) the separation of first offenders awaiting trial from those who have been convicted of crimes; and

(k) the separation of inmates sentenced to work release or weekend detention programs or inmates who are trustees.

.003. *Cell Assignment.* The number and capacity of cells or rooms in a facility shall be designed and constructed so that the mandatory separation provisions of Article 5115, Texas Civil Statutes, and the facility's inmate classification plan can be complied with.

.004. *Responsibility, Records.* The sheriff or his designee should be responsible for the cell assignment of inmates following classification and all information concerning classification and cell assignment shall be kept in the inmates' records.

Medical Services in County Jails 217.13.00

These rules are adopted under the authority of Article 5115.1, Texas Civil Statutes.

.001. *Medical Services to be Provided.* The commissioners court of each county shall provide such medical services as the circumstances and locality of the detention facility permit, and comparable to what is generally available in the county, which may include, but shall not be limited to, the services of a licensed physician, the services of professional and allied health personnel, and hospital or similar services. The commissioners court should provide the services of a licensed physician who shall assume the responsibility as the director of medical services for the quality and availability of all medical services provided to jail inmates, and such physician may be the county health officer.

.002. *Medical Services Plan.* Each detention facility shall have a plan to obtain medical and dental services when they are needed and upon an emergency basis, at any hour, day or night. The plan shall provide that the maintenance of secure custody is not jeopardized while such services are rendered. Such plan shall include:

(a) procedures for regular sick calls;

(b) procedures for referral for medical services and, when necessary, procedures for efficient and prompt care for acute and emergency situations;

(c) procedures for chronic care, long-term care, and convalescent care;

(d) procedures for the control of the dispursement of prescriptions, medications, syringes, needles, housekeeping supplies, aerosol containers, etc., all of which items shall be inventoried and stored under maximum security conditions; all medications shall be distributed in accordance with written instructions from a physician by an appropriate person designated by the sheriff; and no inmate shall be permitted access to the medical and pharmaceutical inventory storage area; and

(e) procedures for preserving the right to body integrity of all inmates, including but not limited to, the observation of community-informed consent standards for treatments and procedures (in the case of minors, the informed consent of a parent, guardian, or legal custodian, when required, shall be sufficient); all examinations, treatments, and other procedures shall be performed in a dignified manner and place.

.003. *Medical Instructions.* All instructions of physicians and professional and allied health personnel shall be followed.

.004. *Medical Records.* Such medical services plan shall include procedures for the maintenance of a separate medical record on each inmate, which record shall include a medical screening procedure administered upon the admission of the inmate to a detention facility and should cover (but not be limited to) the following items:

(a) a medical screening by health personnel or by a trained booking officer who shall record the pertinent information in the separate medical record;

(b) history (past history, review of organ systems);

(c) current illnesses, including medications taken, special diets, therapy;

(d) behavioral observation, including state of consciousness and mental status;

(e) inventory of body deformities, trauma markings, bruises, lesions, ease of movement, etc;

(f) markings, condition of body orifices;

(g) presence of lice and vermin; and

(h) disposition/referral:

(1) assignment;

(2) referral for further evaluation or treatment; and

(3) medical isolations.

Such separate medical record shall be supplemented from time to time and shall reflect all subsequent findings, diagnoses, treatment, disposition, dispensation of medications, and the name of any other institution to which the inmate was released and to which a copy of the medical record was forwarded.

Supervision of Inmates 217.14.00

These rules are adopted under the authority of Article 5115.1, Texas Civil Statutes.

.001. *Regular Observation by Corrections Officers.* Every detention facility housing inmates shall have a corrections officer at the facility 24 hours each day. Detention facilities shall have an established procedure for visual observation of all inmates by corrections officers, either in person or by a monitoring system, with audio capability at least once every hour and on a more frequent basis in high-risk areas and in areas where inmates who are known to be assaultive, potentially suicidal, mentally ill, or who have demonstrated bizarre behavior are confined. In counties where a corrections officer lives in the facility, mandatory hourly observation is not required at night, provided that the facility shall have a continuously operating means of communication with such corrections officer (by electrical intercommunication system, buzzer, alarm, or similar device) available at all times to each inmate for the purpose of notifying such corrections officer of emergencies, illnesses, personal attack, etc., and provided further that such corrections officer must be close enough to the inmate housing area to respond immediately to such notification.

.002. *Corrections Officer Training and Certification.* No person shall perform the duties of a corrections officer in a county jail under these standards unless such person has been certified, within one year from date of employment, as a corrections officer by the Commission on Law Enforcement Officer Standards and Education.

.003. *Corrections Officer Pay.* Pay for persons employed as corrections officers shall be on a basis comparable to and not lower than the pay of other county law enforcement officers.

.004. *Supervisory Personnel.* Inmates shall be supervised by an adequate number of corrections officers to comply with the requirements of state law, these standards, and to carry out the facility plans established pursuant to these standards. In no event shall this be fewer than one corrections officer on each floor of the facility on which 10 or more inmates are housed, nor less than one corrections officer per 45 inmates or increment thereof.

.005. *Census.* Inmates shall be physically counted by a corrections officer at frequent and regular intervals.

.006. *Searches to Reduce and Eliminate Contraband.* For the protection of corrections personnel and inmates:

(a) any items brought into the detention facility by anyone shall be searched for contraband;

(b) any inmate who leaves the security perimeter of the facility shall be thoroughly searched for contraband before re-entering the security perimeter;

(c) there should be regular and irregular searches of the entire facility area for contraband which should be noted in a permanent facility record; and

(d) searches for contraband should be timed so that they cannot be anticipated by the inmates.

Clothing, Personal Hygiene, and Bedding in County Jails 217.15.00

These rules are adopted under the authority of Article 5115.1, Texas Civil Statutes.

.001. *Inmate Clothing.* Standard detention facility clothing shall be issued to all inmates held over 48 hours (the inmates' personal clothing may be substituted for institutional clothing when adequate and if this does not work an undue hardship on the facility laundry or other procedures).

.002. *Laundering.* A change or laundering of clothing shall be furnished at least once a week unless work, climatic conditions, illness, or other factors necessitate more frequent exchange to assure cleanliness.

.003. *Personal Clothing.* If the standard institutional clothing is issued, all inmate personal clothing shall be cleaned or disinfected and stored.

.004. *Personal Hygiene.* Inmates held over 72 hours who are unable to supply themselves with personal care items, either because of indigency or the absence of an inmate canteen, shall be issued the following:

(a) toothbrush;
(b) dentifrice;
(c) soap;
(d) comb;
(e) shaving implements.

.005. *Toilet Paper.* Toilet paper shall be available and drinking cups should be on hand, unless lavatories in the cells are provided with drinking fountains.

.006. *Showers.* Each inmate shall be given the opportunity to shower at least every other day or more often if possible. Inmates on work assignments and those making court appearances shall be given an opportunity to shower daily. Inmates should be required to shower at least every other day.

.007. *Compelling Showers, Haircuts.* Whenever clearly justified for health or sanitary reasons, the sheriff may require a shower and/or haircut. Haircuts by reasonably skilled persons should be available on a voluntary basis to all inmates, sentenced and unsentenced.

.008. *Bedding and Linens.* Upon admission, a standard issue of bedding and linens to each inmate to be detained overnight shall include, but shall not be limited to, the following (freshly laundered and sanitized):

(a) one clean, safe, serviceable mattress;
(b) one clean sheet or clean mattress cover;
(c) appropriate towel; and
(d) one blanket, or more depending upon climatic conditions.

.009. *Laundering of Bedding.* Washable items such as sheets, towels, and mattress covers shall be exchanged for clean replacements at least once each week, or more often if necessary. Blankets shall be laundered or dry cleaned at least every three months or more often if necessary.

.010. *Mattresses.* Mattresses should be removed to storage from unoccupied beds and should be sanitized before reissue. In the absence of sanitizing equipment, the mattress shall at least be swept and aired for a reasonable period of time, then sprayed with a disinfectant.

Sanitation in County Jails 217.16.00

These rules are adopted under the authority of Article 5115.1, Texas Civil Statutes.

.001. *Sanitation Plan.* A facility shall have and implement a written plan for the maintenance of an acceptable level of cleanliness and sanitation throughout the facility. Such plan shall provide for:

(a) a regular daily schedule for the work and inspections necessary to keep the facility clean, which schedule shall be assigned and supervised by correction officers (and not by inmates) who have the responsibility for keeping the facility clean and making regular sanitation inspections;

(b) regular tests and inspections of water and sewage systems and food preparation areas maintained by the facility;

(c) adequate and safe cleaning equipment;

(d) water-tight garbage containers with tight-fitting covers;

(e) the maintenance of toilets, wash basins, sinks, and other equipment throughout the facility in good working order; and the maintenance of all counters, shelves, tables, equipment, and utensils with which food or drink comes into contact in a clean condition and in good repair;

(f) clean washing aids, such as brushes, dish cloths, and other hand aids used in dishwashing operations and for no other purpose;

(g) a well-ventilated place for storing and drying mops and other cleaning tools;

(h) the continuous compliance of the water system and sewage system with the minimum requirements for such public systems.

.002. *Specificity.* Such plan shall specify how and by whom the foregoing provisions are to be met.

Food Service in County Jails 217.17.00

These rules are adopted under the authority of Article 5115.1, Texas Civil Statutes.

.001. *Frequency of Meals.* In a lockup, food shall be served a minimum of two times in any 24-hour period; provided that any person being held for more than 24 hours shall be served three meals in the 24-hour period after the first 24 hours. In jails, food shall be served three times in any 24-hour period. If more than 12

hours pass between three meals, supplemental food must be served.

.002. *Dining/Day Rooms for Meals.* Meals should not be served in cells but in dining rooms or day rooms. Menus should be planned to provide a variety of foods. Inmates should not be allowed to store food in their cells or day rooms. All quarters should be kept free of all unnecessary articles which might attract vermin.

.003. *Balanced Diet.* A balanced diet shall be served to inmates.

.004. *Special Diets.* Special physician prescribed diets for inmates shall be followed closely.

.005. *Staff Supervision.* Food shall be served only under the immediate supervision of a staff member, and care shall be taken that hot foods are served reasonably warm and that cold foods are served reasonably cold.

.006. *Outside Food Preparation.* Jails without kitchen facilities shall obtain prepared foods from sources which are approved either by the local health officer or the Food and Drug Division of the Texas Department of Health Resources. The transfer of such food to the jail facility shall be in a manner to prevent contamination or adulteration.

Discipline in County Jails 217.18.00

These rules are adopted under the authority of Article 5115.1, Texas Civil Statutes.

.001. *Inmate Discipline Plan.* Every sheriff shall have and implement a written plan for inmate disciplinary procedures prescribing rules governing inmate conduct and staff handling of inmate discipline problems. The plan and rules shall be available for commission review and approval, and shall:

(a) comply with applicable state and federal law concerning administrative disciplinary procedures for inmates;

(b) provide for uniform application of disciplinary rules among all inmates and for maintaining as part of the inmates' file a written record of all discipline, investigation, and punishment (except informal verbal handling by staff or minor acts of nonconformance or minor rule violations);

(c) provide for reasonable forms of discipline directly related to the condition of the inmates and the severity of the infraction such as:

(1) loss of privileges;
(2) assignment of extra work;
(3) removal from work details;
(4) forfeiture of "good time" credit earned;
(5) solitary confinement; and
(6) filing formal charges;

(d) prohibit:

(1) deviation from normal feeding procedures as a disciplinary sanction;

(2) corporal punishment, meaning punishment inflicted directly on the inmate's body;

(3) administration of any form of disciplinary action by inmates;

(4) solitary confinement for more than 15 consecutive days without a finding on a new charge of a subsequent violation of the facility rules and regulations; provided that during solitary confinement, inmates, at intervals of three days or less, shall be removed from their cell, receive a health screening and a shower, and be afforded the opportunity to attend to other personal hygiene matters;

(5) a deprivation of clothing or bedding (excepting those inmates who destroy bedding or clothing; and a decision to deprive such inmates of such articles shall be reviewed not less than every 24 hours);

(6) the use of a violent cell for disciplinary purposes;

(7) the deprivation of items necessary to maintain an acceptable level of personal hygiene;

(8) the deprivation of correspondence privileges for longer than 72 hours without the review and approval of the sheriff or his designee; provided that in no case shall the correspondence privilege with any member of the State Bar, holder of public office, the courts, the sheriff, or the Commission on Jail Standards be suspended;

(e) provide for the designation of one or more disciplinary officers who will act promptly on all charges of violation of facility rules by inmates and who shall have investigative and punitive powers. Staff disciplinary officers shall not participate in a disciplinary review if they are involved in the charges as complainant;

(f) provide that minor acts of nonconformance or minor violations of institution rules may be handled informally by any staff member by counseling or advising the inmate of expected conduct;

(g) provide for the maintenance of a record of reported major violations or repetitive minor acts of nonconformance, which record shall contain a description of the infraction and names of investigating officers and witnesses;

(h) provide an opportunity for the inmate to be informed of the charges made against him, to appear and speak on his own behalf, and to present witnesses before the imposition of solitary confinement or loss of good time;

(i) provide that the sheriff and the inmate shall be advised of the action to be taken by the disciplinary officer.

Recreation and Exercise in County Jails 217.19.00

These rules are adopted under the authority of Article 5115.1, Texas Civil Statutes.

.001. *Physical Exercise.* Each inmate shall be allowed one hour of supervised physical exercise or recreation at least three days per week. Such exercise should be outdoors if weather and facilities permit.

.002. *Sunlight.* Inmates confined longer than 30 days shall be allowed access to sunlight no less than once weekly.

.003. *Day Rooms.* Where feasible, a day room should be provided for reading, writing, or other indoor activities. Recreation activities such as arts, crafts, cards, dominoes, checkers, chess, and similar diversions should be considered as possible recreational activities. A television and radio may be made available for day room viewing and listening.

.004. *Volunteers.* Volunteers may be utilized in conjunction with recreational and exercise activities.

Education and Rehabilitation Programs for County Jails 217.20.00

These rules are adopted under the authority of Article 5115.1, Texas Civil Statutes.

.001. *Education and Rehabilitation Plan.* Each detention facility shall have and implement a plan approved by the commission for inmate rehabilitation and education, which plan shall make maximum feasible use of the resources available in and to the community in which the detention facility is located. The plan may include programs for voluntary participation by inmates such as the following:

(a) testing and counseling in connection with:

(1) alcohol or other drug abuse problems;
(2) vocational rehabilitation;
(3) academic and vocational aptitudes and goals;
(4) job placement;
(5) family problems; and
(6) personal psychological or psychiatric problems;

(b) participating in an academic, library, reading, counseling, therapy, and/or training program.

.002. Library. Each detention facility shall have and implement a written plan for providing available library services to inmates.

.003. Criteria, Eligibility. Reasonable criteria for eligibility shall be established, and an inmate may be excluded or removed from any class or activity for failure to abide by facility rules and regulations.

.004. Continuity. If possible, the plan established under .001 above should be devised so that an inmate may continue the program upon release from the facility or when transferred to the Texas Department of Corrections.

Inmate Work Assignments in County Jails 217.21.00

These rules are adopted under the authority of Article 5115.1, Texas Civil Statutes.

.001. Work. All work assignments shall be consistent with real work (not make-work).

.002. Assignment and Supervision by Corrections Officer. Inmate work shall be assigned and supervised by corrections officers and never by inmates.

.003. Voluntary. Inmates who have not been convicted may not be required to participate in a work program, but may be required to keep their immediate living area clean.

.004. Maximum Hours. Inmates should not be required to work more than 48 hours per week, except in an emergency.

.005. Outside Security Perimeter. Only inmates classified in a trusty status should be assigned to work outside the security perimeter.

.006. Non-Exclusivity. This provision is not intended to limit in any way the utilization of work-release, work-furlough, or other programs affording inmates work or employment opportunities outside the facility.

Plans for Inmate Privileges in County Jails 217.22.00

These rules are adopted under the authority of Article 5115.1, Texas Civil Statutes.

.001. Plan. Each detention facility shall have and implement a written plan approved by the commission governing the availability and manner of use of inmate privileges in the following areas:

(a) telephone privileges;
(b) correspondence privileges;
(c) commissary privileges;
(d) visitation privileges; and
(e) religious service privileges.

Female Inmates in County Jails 217.23.00

These rules are adopted under the authority of Article 5115.1, Texas Civil Statutes.

.001. Plan for Processing Female Inmates. Every detention facility shall have and implement a written plan for processing and supervising female inmates. The plan shall be available to the commission for review and approval, and shall provide for the following:

(a) the presence or availability upon short notice of part-time or full-time female staff members;
(b) except in emergency, the presence of a female staff member when:
(1) a female inmate is admitted and processed into a facility;
(2) the cell of a female inmate is entered.
(c) the same training, qualifications, and certifications for female jail personnel as for male jail personnel;
(d) the same classification, separation, housing, supervision, and medical care;
(e) an opportunity to participate in all inmate programs;
(f) an adequate supply of toiletries, personal hygiene equipment, and other similar materials;
(g) that any woman inmate shall, upon her request, be allowed to continue to use medications related to menstrual cycle.

Plans for Emergencies, Fire Prevention, Critical Articles in County Jails 217.24.00

These rules are adopted under the authority of Article 5115.1. Texas Civil Statutes.

.001. Emergency Plan. The sheriff shall, by June 30, 1977, formulate and implement a comprehensive written plan to meet emergencies relative to escapes, riots, assaults, fires, rebellions, and any other type of major disaster or disturbance. Such plan should:

(a) outline the responsibilities of detention facility staff, evacuation procedures, and subsequent disposition of the inmates once removed from the detention facility;

(b) provide:
(1) that emergency exit doors be clearly marked;
(2) the location of the keys which open these doors;
(3) that all detention facility staff should be trained to handle any fire emergency.

.002. Fire Prevention Planning. The sheriff shall have a written plan for fire suppression and prevention after consultation with the local fire department or the Office of the State Fire Marshal. The plan should include regular inspections.

.003. Keys. Detention facility keys should be stored in a secure key locker when not in use and a record should be kept of all keys in storage or use. There should be at least two sets of detention facility keys, one set to use and the other kept for use in the event of an emergency.

.004. Gun Lockers. A container capable of being locked should be provided outside the security area for separate storage of officers' weapons.

.005. Master Keys. If master keys capable of opening locks on each floor of a facility are not available for use in emergency situations, then a device capable of releasing all locks must be available.

Compliance and Enforcement Rules 217.25.00

These rules are adopted under the authority of Article 5115.1, Texas Civil Statutes.

.001. Regular Local Inspections. During intervals of at least four months and at least two times each year, the sheriff shall, and the commissioners court of each county is encouraged to, visit and inspect each jail housing inmates from their county, inquiring into the security, control, conditions, and state of compliance with the rules of the commission. The sheriff and commissioners court shall report to the commission annually by September 1 of each year, on the form contained in the appendix to these rules, the conditions in each such jail.

.002. Regular Commission Inspections. The executive director, or his authorized representatives, from time to time not less than once each year for the express purpose of determining the care, conditions, and standards provided for inmates confined in jails, shall visit and inspect each county jail within this state, shall

inquire into each jail's security, control, conditions, and compliance with the established minimum standards for jails, and shall within 30 days of each visit and inspection report the results hereof to the commissioners court and sheriff responsible for such jail, and to the commission on the form prescribed by the commission contained in the appendix to these rules.

.003. Right to Visit and Inspect. The sheriff of jails, at any reasonable time, shall admit the executive director, the commission members and their authorized representatives, or either of them, into any and all parts of any county jail facility; exhibit to them, upon request, all the books, records, data, documents, and accounts pertaining to any county jail or to the inmates confined therein; and assist such persons by all means at their disposal to enable them to perform the functions, powers, and duties of their office. The above authorized persons shall have the right and authority to examine, under oath, any of the officials of the jail or inmates therein. In the exercise of its functions, powers, and duties, the commission may issue subpoenas and subpoenas *duces tecum* to compel the attendance of witnesses and the production of books, records, and documents, administer oaths, and take testimony concerning all matters within its jurisdiction.

.004. Review and Notice of Compliance with Minimum Standards. The commission, upon receipt of the visitation and inspection reports provided in Rules .002 and .003 hereof, shall review the same and shall forthwith issue a notice of noncompliance to the responsible sheriff and the commissioners court of each instance in which such jail fails to comply with the minimum standards established under Articles 5115 and 5115.1, Vernon's Annotated Civil Statutes, and the rules of the commission. The notice of noncompliance shall provide a reasonable time, not to exceed one year, within which appropriate corrective measures shall be completed. A copy of such notice of noncompliance shall be delivered to the governor.

.005. Enforcement of Minimum Standards; Remedial Orders. Upon receipt from the commission of a notice of noncompliance of their county jail with the established minimum jail standards, the responsible sheriff and commissioners court shall initiate appropriate corrective measures within the time prescribed by the commission in its notice (which shall not exceed 30 days) and shall complete the same within a reasonable time (not to exceed one year) as prescribed by the notice of noncompliance. If the responsible sheriff and commissioners court receiving a notice of noncompliance fail to initiate corrective measures or to complete the corrective measures within the time prescribed, the commission may issue a remedial order declaring that the jail in question, or any portion thereof, be closed, that further confinement of inmates or classifications of inmates in the noncomplying jail or any portion thereof be prohibited, or that all or any number of the inmates then confined be transferred to and maintained in another designated jail or detention facility, or any combination of such remedies. Such remedial order shall be in writing and shall specifically identify each minimum standard with which the jail has failed to comply. The remedial order shall be delivered by certified or registered mail or by personal service to the responsible sheriff and commissioners court. Such remedial order shall become final and effecive 15 days after receipt thereof by either the responsible sheriff or commissioners court; provided, however, that in the event of a hearing of such remedial order as hereinafter prescribed is requested, the enforcement of the remedial order shall be stayed until such time as the commission has rendered its decision following its hearing thereon.

In addition to the foregoing, the commission, upon good cause therefor and in lieu of closing a jail or ordering the transfer of prisoners therefrom, may at any time institute an action in its own name to enforce or enjoin the violation of established minimum jail standards, its order, rules, or procedures, or of Articles 5115 and 5115.1, Vernon's Annotated Civil Statutes. Any such action shall be cumulative of and in addition to other remedies provided by law and shall be brought in a district court of Travis County, as provided in Section 11(f), Article 5115.1, Vernon's Annotated Civil Statutes. The commission shall be represented by the attorney general in such actions.

.006. Request for Hearing

(a) Any sheriff or commissioners court disagreeing with any remedial order or action on an application for variance of the commission, within 15 days after the date thereof, may request a hearing upon any matter of fact or law with which he or the court disagrees.

(b) The request for hearing shall be effective if deposited in the United States mail within 15 days from the date of the remedial order or action on application for variance, or if it is otherwise received by the commission within such 15-day time period. The request for hearing shall be directed to the chairman of the commission and shall contain the following statements:

(1) the legal authority and jurisdiction under which the hearing should be held;

(2) the particular statutes, sections of statutes, and rules involved;

(3) a short, plain recital of the errors of fact or law for which review is sought, stating in detail the facts justifying the amendment or reversal of the order or action of the commission;

(4) the name and address of the person or representative to whom notices to other written communications shall be directed, and the name and address of the person or representative who will appear at the hearing, and the name and address of the person or persons on whose behalf he will appear.

(c) While sections (a) and (b) of this rule will be reasonably construed, a request for hearing, if not made in the time and manner herein provided, shall be deemed waived, and in such event, the remedial order or action on application for variance of the commission shall become final.

(d) Upon the receipt of a timely request for hearing, the commission shall conduct a hearing in accordance with its rules of practice in contested cases.

(e) Following the hearing, the commission shall render its decision either by stating the same in the record or otherwise in writing. The decision may approve the remedial order or action on the application for variance in its entirety, may alter or amend the same in whole or in part, may grant a reasonable variance from the minimum standards for county jails, or any combination of the above, provided however that none such actions shall conflict with the provisions of Section 11(c) of Article 5115.1, Vernon's Annotated Civil Statutes.

Variance Procedure Rules 217.26.00

These rules are adopted under the authority of Article 5115.1, Texas Civil Statutes.

.001. Policy. Articles 5115 and 5115.1, Vernon's Annotated Civil Statutes, and these rules prescribe minimum standards for the construction, equipment, maintenance, operation, personnel, programs, and services of county jails and for the custody, care, and treatment of inmates of county jails. They are in the public interest of the State of Texas and should in all instances be reasonably enforced by the commission.

.002. Filing, Showing. Should a county jail not be in strict compliance with state statutes or these rules, if clearly justified by the facts and circumstances, the sheriff or commissioners court having jurisdiction of a noncomplying jail may file with the commission an Application for Variance, and upon a showing of good cause and clear justification therein for such noncompliance, the commission may grant a reasonable variance, except that no variance may be granted to permit unhealthy, unsanitary, or unsafe conditions.

.003. *Contents.* An Application for Variance must include:

(a) the name and address of the sheriff and county judge having jurisdiction of the noncomplying jail;

(b) the specific statutes, sections of statutes, and rules with which the county jail is not in strict compliance;

(c) the specific manner in which the county jail is not in strict compliance;

(d) a detailed statement of efforts expended to bring the county jail into strict compliance;

(e) documented statements of projected costs to bring the county jail into strict compliance;

(f) an estimate of the time required to bring the county jail into strict compliance and the bases of such estimate;

(g) a statement of the effect of such noncompliance upon jail operations and upon the custody, security, care, and supervision of the inmates therein;

(h) a statement of the nature of the variance requested and length of time for which it is requested;

(i) a statement that the granting of such variance will not result in unhealthy, unsanitary, or unsafe conditions, including where appropriate detailed support for such statement; and

(j) any additional statements, documentation, or evidence demonstrating a clear justification for the requested variance.

.004. *Burden.* The burden of showing a clear justification for a variance shall be upon the party filing an Application for Variance. An Application for Variance will not be granted if it reasonably appears to the commission that the variance requested would permit or create unhealthy, unsanitary, or unsafe conditions or otherwise jeopardize the security or supervision of inmates or the programs and services required by law.

.005. *Determination, Notice.* The commission shall consider each Application for Variance and shall enter its order granting or denying the application in whole or in part. Notice of the order of the commission shall be mailed by certified or registered mail or delivered in person to the sheriff and the county judge named in the Application for Variance.

.006. *Request for Hearing.* Any sheriff or commissioners court disagreeing with an order or action of the commission upon any Application for Variance may, within 15 days of the date of such order or action, file a request for hearing in accordance with the provisions of Rule 217.25.00.006 above.

Rules of Practice in Contested Cases 217.27.00

These rules are adopted under the authority of Article 5115.1, Texas Civil Statutes.

.001. *Scope; Open Hearings.* These rules of practice shall apply to contested cases arising under the Commission on Jail Standards Act. All hearings on such cases shall be open to the public under the Texas Open Meetings Act, and they shall be conducted in accordance with the Administrative Procedure and Texas Register Act.

.002. *Notice of Hearing.*

(a) In all contested cases, all parties will be afforded an opportunity for hearing after reasonable written notice of not less than 10 days, which notice shall be sent by registered or certified mail to the person or representative named therein.

(b) The notice of hearing shall include:

(1) the name and address of the person or representative designated in the request for hearing to receive notices and written communications;

(2) a statement of the time, place, and nature of the hearing;

(3) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(4) a reference to the particular statutes and rules involved; and

(5) a short and plain statement of the matters asserted in order to show cause why the action of the commission should not be enforced. If the commission is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, on timely written application, a more definite and detailed statement must be furnished not less than three days prior to the date set for the hearing.

.003. *Presiding Officer.*

(a) The chairman of the commission, and, in his absence, the vice-chairman, shall preside at all hearings. In the absence of both the chairman and vice-chairman, a member of the commission designated by the chairman shall preside.

(b) The presiding officer and members of the commission shall not submit to questioning during the hearing of any contested case.

.004. *Ex Parte Consultations.* Unless required for the disposition of *ex parte* matters authorized by law, members of the commission may not communicate, directly or indirectly, with any party or his representative in a contested case in connection with any issue of fact or law except upon notice and with the opportunity for all parties to participate.

.005. *Informal Disposition.* Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

.006. *Appearances.*

(a) In order to promote speedy and orderly hearings, the parties and their attorneys, if any, should arrive at the place designated for the hearing at least one hour prior to the time set for such hearing in order to provide the parties an opportunity to resolve procedural matters.

(b) Parties may appear in their own behalf, through designated representatives, through attorneys-at-law duly licensed to practice in the courts of the State of Texas, or by attorneys admitted to practice in other states joined by an attorney duly licensed to practice in the courts of the State of Texas.

.007. *Failure to Appear.* If a party or his representative named on the request for hearing and designated to receive notices and written communications, after receiving the notice of hearing, fails to appear at the time and place designated for the hearing, the hearing shall proceed in his absence and all matters stated in the notice of hearing may be taken as uncontroverted by the party failing to appear.

.008. *Continuances.* A hearing before the commission shall begin at the time and place stated in the notice of hearing, provided that the presiding officer, for good cause shown in a request for continuance stating the concise reasons for requesting a continuance and filed at least three days prior to the date assigned for the hearing, may continue the commencement of the hearing for a reasonable period of time or change the place of hearing. Only under extreme circumstances will a request for continuance filed less than three days prior to the time stated for the hearing be considered.

.009. *Written Answers; Briefs; Stipulations.*

(a) A person who has been served with a notice of hearing may file a written answer thereto prior to the date set for the hearing. If written briefs are to be presented, such briefs will be received at any time prior to the commission's decision.

(b) The parties to a hearing before the commission may, by stipulation in writing filed with the commission or by the making of a statement into the

record, agree upon the facts or any portion of the facts involved in the controversy pending before the hearing officer, which stipulation may be considered and used as evidence in the hearing.

.010. Rules of Evidence; Official Notice.

(a) Hearings are conducted on a trial format and, unless otherwise agreed among the parties, the staff of the commission will present its opening statement first, will present its evidence first, and will have the right to open and close arguments. The presiding officer has the right to reasonably limit the time allotted for arguments by the parties.

(b) In any hearing conducted pursuant to these rules, the staff will usually present evidence to prove the facts alleged in the notice of hearing unless these rules specifically provide otherwise. The staff will assume the burden of proving a *prima facie* case by a preponderance of the evidence based upon reasonable inferences drawn from the evidence presented, except that the burden of proof of an application for variance shall be upon the party claiming the same.

(c) Any party which, in its request for hearing, seeks an amendment or reversal of a remedial order or action on an application for variance shall have the burden of proof to show cause why the action of the commission should not be upheld and enforced. However, the staff can make allegations in the official notice of hearing which were not previously made, in which event the burden of proving such allegations is on the staff.

(d) The rules of evidence as applied in non-jury civil cases in the district courts of this state shall be followed to the extent required by the Administrative Procedure and Texas Register Act. When the commission deems it necessary in order to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, including hearsay evidence. Irrelevant, immaterial, or unduly repetitious evidence may be excluded.

(e) Witnesses may be sworn by the commission and the testimony taken under oath.

(f) If a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(g) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. On request, parties shall be given an opportunity to compare the copy with the original, provided that the original is reasonably available and such comparison appears material.

(h) Official notice may be taken of all facts judicially cognizable and of generally recognized facts within the area of the commission's specialized knowledge. Parties will be notified either before or during the hearing of the material officially noticed, and they will be afforded an opportunity to contest the material so noticed.

.011. Subpoenas and Depositions.

(a) On a showing of good cause, and on deposit of sums that will reasonably insure payment of witness fees and mileage, the commission shall issue a subpoena addressed to the sheriff or any constable to require the attendance of witnesses and the production of books, accounts, records, papers, correspondence, or other objects as may be necessary and proper for the purposes of the proceedings.

(b) On a showing of good cause, and on deposit of sums that will reasonably insure payment of witness fees and mileage, the commission shall issue a commission, addressed to the several officers authorized by statute to take depositions, to require that the deposition of a witness be taken, which commission shall authorize the issuance of any subpoenas necessary.

(c) Any party desiring to take a deposition shall make written application therefor, setting forth the reasons why such deposition should be taken, the name and residence of the witness, the matters concerning which it is expected to question the witness, and the time and place proposed for the taking of the deposition.

(d) Depositions will be taken in the manner prescribed for depositions in the Administrative Procedure and Texas Register Act.

(e) A witness or deponent who is not a party and who is subpoenaed or otherwise compelled to attend any hearing or proceeding to give a deposition or to produce books, accounts, records, papers, correspondence, or other objects that may be necessary and proper for the purposes of the proceeding is entitled to receive:

(1) mileage allowance, as required by law, for going to and returning from the place of the hearing or the place where the deposition is taken, if the place is more than 25 miles from the person's place of residence; and

(2) a fee, as required by law, for each day or part of a day the person is necessarily present as a witness or deponent.

Mileage and fees to which a witness is entitled shall be paid by the party at whose request the witness appears or the deposition is taken, on presentation of proper vouchers sworn by the witness and approved by the commission.

.012. Disposition.

(a) A final decision or order adverse to a party in a contested case must be in writing or stated in the record, and must be rendered within 60 days after the date the hearing is finally closed. Such final decision or order shall include findings of fact and conclusions of law, separately stated, and shall include a ruling on each proposed finding; and notice of such decision shall be mailed by certified or registered mail to the person or representative designated in the request for hearing to receive notices.

(b) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(c) A motion for rehearing must be filed within 15 days and replies filed within 25 days after the date of rendition of a final decision or order. If the commission has not acted upon the motion within 45 days after the date of rendition of the final decision or order, the motion is overruled by operation of law.

(d) A decision is final, in the absence of a timely motion for rehearing, on the expiration of the period for filing a motion for rehearing, and is final and appealable on the date of rendition of the order overruling the motion for rehearing, or on the date the motion is overruled by operation of law.

.013. Record.

(a) Proceedings or any part of them at any hearing before the commission must be transcribed upon the written request of any party, and the cost thereof may be assessed by the commission to one or more parties. Neither the commission nor any party is limited to any stenographic record of proceedings.

(b) The record in a contested case includes:

(1) all pleadings, motions, and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections and rulings on them;

(5) proposed findings and exceptions;

(6) any decision, opinion, or report by the officer presiding at the hearing; and

(7) all staff memoranda or data submitted to or considered by the hearing officer.

James Greenwood III
Chairman
Commission on Jail Standards

SUMMARY OF THE TEXAS PENAL CODE,

CONTROLLED SUBSTANCES ACT, AND MAJOR DRIVING OFFENSES[1]

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[1]by Carol Vance, District Attorney, Harris County, Texas

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Title 1. Introductory Provisions

Chapter 1. General Provisions: This chapter explains general terms such as the effects of the Code and definitions of commonly used terms such as "benefit", "bodily injury", "conduct", "consent", "harm", "possession", etc.

Chapter 2. Burden of Proof: This chapter explains burden of proof, "exceptions", "defenses", "affirmative defenses", and "presumptions". Generally, the prosecution must negate any "exceptions" found in a statute as part of its case. Any "defense" must be raised by the evidence. And where a statute mentions an "affirmative defense", the defense must prove this by a preponderance of the evidence as opposed to simply creating a reasonable doubt in order to obtain an acquittal.

Chapter 3. Multiple Prosecutions: This chapter explains multiple prosecutions and introduces a new concept into Texas law, that is, a defendant may be prosecuted for all offenses arising out of the same criminal episode whether the offenses are alleged in the same or separate indictments. "Criminal episode" means the repeated commission of any property crime found within Title 7.

Title 2. General Principles of Criminal Responsibility

Chapter 6. Culpability Generally: This chapter explains the four culpable mental states now required to commit a criminal offense. From highest to lowest, these are:

(1) *intentional*-when it is his conscious objective or desire to engage in the conduct or cause the result;

(2) *knowingly*-when he is aware of the nature of his conduct, or the circumstances surrounding his conduct, or that his conduct is reasonably certain to cause the result;

(3) *recklessly*-when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances surrounding his conduct exist or the result will occur;

(4) *criminal negligence*-gross deviation from the standard of care of an ordinary person.

It should be noted that criminal negligence now requires "a gross deviation from the standard of care an ordinary person would exercise under all the circumstances. . ." as opposed to the requirement of ordinary negligence found under the old code.

Chapter 7. Criminal Responsibility for Conduct of Another: The traditional distinctions between accomplices and principals have been abolished. One doesn't have to be charged as a principal or an accomplice. The code provides anyone is criminally responsible if:

(1) the offense is committed by his own conduct;

(2) acting with the kind of culpability required for the offense, he causes or aids an innocent or nonresponsible person to engage in conduct prohibited by the definition of the offense;

(3) acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids or attempts to aid the other person to commit the offense; or

(4) having a legal duty to prevent commission of the offense and acting with intent to promote or assist its commission, he fails to make a reasonable effort to prevent commission of the offense.

If, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, all conspirators are guilty of the felony actually committed. The fact that the co-conspirator had no intent to commit it is no excuse, if the offense was committed in furtherance of the unlawful purpose and one that should have been anticipated as a natural result of engaging in the conspiracy.

Another major change is that a coporation as well as the individual who has the authority and acts for or with the corporation in perpetrating the crime, is now criminally responsible for any criminal offense. Corporations are only subject to fines.

Chapter 8. General Defenses to Criminal Responsibility: *Section 8.01. Insanity*--This is changed so that it is now an affirmative defense to prosecution that, at the time of the conduct charged, the actor, as a result of mental disease or defect, either did not know that his conduct was wrong or was incapable of conforming his conduct to the requirements of the law he allegedly violated. The term "mental disease or defect" does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

Section 8.04. Intoxication--Voluntary intoxication is not a defense to a crime, and temporary insanity caused by intoxication can only be used in mitigation of punishment.

Section 8.06. Entrapment--This is a defense to prosecution only if the accused engaged in the conduct because he was induced to do so by a law enforcement agent using persuasion or other means likely to cause persons to commit the offense. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

In this section "law enforcement agent" includes personnel of the state and local law enforcement agencies as well as of the United States and any person acting in accordance with instructions from such agents.

Chapter 9. Justification Excluding Criminal Responsibility: This chapter is especially important to the law enforcement officer and will be dealt with in more detail.

All force is unlawful unless specifically justified by the provisions of the code.

Previously the code has spoken in terms of justifiable homicide in defense against death or serious bodily injury. New terms are now employed. *Justification* from criminal responsibility (as provided for in Chapter 9) speaks in terms of "force" and "deadly force" and specifies when each may be used. Therefore, if force or deadly force may be used, it must be specifically authorized. Our purpose in this pamphlet is to reduce to more simple terms the quite complex wording of the code. However, each reader should be familiar with the more technical wording of Chapter 9 for the details of justification.

Since the code speaks in terms of force and deadly force, these terms must be understood. "Deadly force" is force that is (1) *intended* to cause, or (2) *known* to cause, or (3) from the manner of use or intended use is *capable* of causing death or serious bodily injury. Force, of course, is any degree of force less than deadly force.

When can force be legally used by police officers or by citizens?

When can deadly force be used?

How much force can be used and under what circumstances?

Under our old laws, there were numerous circumstances that would give rise to justifiable homicide. For example, a person could kill his wife's paramour in the act of having relations. A person could kill to prevent the consequences of burglary or theft at nighttime. The paramour statute is repealed, and killing under these circumstances would now constitute murder or voluntary manslaughter. Under the provision to protect property, one might kill to prevent theft at night, but only under extremely limited circumstances and as a matter of last resort.

Under the new code, confinement (Section 9.03) is treated the same as force and is justified to the same extent. Unlawful confinement, without justification, would cause a person to be guilty of false imprisonment. Also, if confinement is justified, the confinement must be terminated as soon as possible unless it is an arrest for an offense.

With regard to threats (Section 9.04), a threat of force is justified whenever the actual use of force is justified; however, one may *threaten* to use deadly force, and it not be considered the *use* of deadly force, as long as the purpose is limited to creating an impression that deadly force will be used if necessary.

Even if force, confinement, or threat of force is justified by law, if anyone *recklessly* injures or kills an innocent third person, then his act would not be justified by law. (Section 9.05). For example, a police officer who shoots at a fleeing robber on a crowded street would be subject to prosecution for involuntary manslaughter for killing a bystander. Also, it should be noted that any justification under the Penal Code would not necessarily change any rights or remedies available in a civil lawsuit for damages. (Section 9.06).

One innovation of the new code is a new defense to crime entitled the defense of necessity (Section 9.22). Conduct is justified if the person involved believes such conduct is immediately necessary to avoid imminent harm. Thus, it ultimately requires the judge or jury to balance the urgency of avoiding harm against the harm actually done by violating the law. Under the old law, there were special statutes which embodied this concept such as Article 1196 that allowed an abortion to save the mother's life, or Article 1310 that permitted a house to be destroyed to save other houses from fire. These no longer exist. But under the defense of necessity, consider the following example. Suppose the driver of an automobile chooses to swerve and run over one person in order that his car would miss running over and killing several other persons. This might well be justifiable depending on all the facts and circumstances.

In the area of self defense (Section 9.31 and 9.32), the law has been changed significantly. A person is now justified in using only that degree of force that he reasonably believes necessary to protect himself. The justification relies on: (1) the existence of necessity, (2) the occasion on which force was used, (3) the degree of force used, and (4) the nature of the conduct to which responded. There are four situations in which the use of force is *not* justified:

(1) Verbal provocation alone does not merit the use of force in response. The old provision permitting mitigation of punishment for assults engendered by "insulting or abusive" words has been repealed.

(2) The right of self defense in order to resist an illegal arrest or search by a peace officer no longer exists, *unless* the officer, prior to any resistance, uses greater force than necessary. Under old law, one had the right to resist an illegal arrest by a peace officer and to act in self defense to avoid the arrest. Now Section 38.03 makes resisting arrest a Class A misdemeanor and a third degree felony if a deadly weapon is used. Persons acting under the direction and in the presence of a peace officer are accorded this same protection.

(3) If there was consent to the exact force used, then force used in retaliation is not justified. This retains our present law of mutual combat.

(4) Provoking the difficulty is retained and prohibits one from using force if he had provoked the difficulty as a means of injuring the adversary. This is commonly referred to as imperfect right of self defense.

The use of *deadly* force in self defense is treated separately (Section 9.32) and is more limited than the defense provisions as we have known them. Although deadly force can be used to prevent the imminent commission of the crimes of aggravated kidnapping, murder, rape, aggravated rape, robbery, and aggravated robbery, such right is not absolute in that if a reasonable person would have retreated, then the use of deadly force would not be justified. Unless it falls within the defense of property section, one can no longer kill to prevent theft at night or burglary.

Under old Texas law, a person acting in self defense did not have to retreat and could stand his ground, but now a person must retreat if a reasonable person in the same situation would have retreated.

Perhaps the safest course of action is for no one to use deadly force unless he believes (1) that his or another's life is in jeopardy, (2) that deadly force is immediately necessary to preserve that life, and (3) that a reasonable person would not have retreated.

The new code allows the use of force or deadly force to protect a third person under the very same conditions and with the same restrictions that the person could have used in defending himself (Section 9.33). Additionally, however, is the requirement that the intervention must be reasonably believed to be necessary to protect the third person. Any force, short of deadly force, may be used to prevent a suicide.

Both force and deadly force are justified in defense of property, but under limited circumstances (Sections 9.41 and 9.42).

Force may be used to protect land or movable property if such force is immediately necessary to *prevent or terminate* another's interference with the property.

If the property has been *taken* from the owner, then force may be used to regain possession if:

(1) done immediately or in fresh pursuit after the taking, and,

(2) the person seeking to regain possession reasonably believes that the taking was not under claim of right, *or*

(3) the property was taken by force, threats or fraud.

Deadly force to protect property may be used if it is immediately necessary:

(1) to *prevent the imminent commission* of arson, burglary, robbery, aggravated robbery, theft during the nighttime or criminal mischief during the nighttime, or

(2) to *prevent escape with property* taken in a burglary, robbery, aggravated robbery or theft at night if the deadly force is exerted against the person who is fleeing immediately after committing the offense.

However, using deadly force to protect property must always be a last resort in that the code requires that either the property cannot be protected or recovered by any other means *or* that the use of force other than deadly force would subject himself or another to a substantial risk of death or serious bodily injury.

One may use any degree of force against another to protect the property of a third person (Section 9.43) under the same rules governing the protection of his own property if he reasonably believes that the unlawful interference constitutes theft or criminal mischief. One may also act to protect the property of a third person if:

(1) such third person requested such protection, or

(2) he has a legal duty to protect such property, or

(3) such third person is his spouse, parent, child, or resides with or is under his care.

The code permits the use of a device to protect property (Section 9.44) if it is not designed to cause death or serious bodily injury and the use of such device is reasonable at the time of installation. This supposedly covers using barbed wire to enclose a pasture but not rigging a "spring gun" to deal with trespassers.

But it must always be remembered that deadly force would not be justified under any of these circumstances unless the land or property could not be protected or recovered by any other means.

A peace officer is authorized to use force which he believes immediately necessary to make or assist in making an arrest or search or to prevent escape after arrest (Section 9.51 and 9.52). However, the officer must believe the arrest or search lawful or the warrant is valid and before using force, he must identify himself as a peace officer and apprise the person of his purpose of arrest or search. If the officer believes his identity and purpose are already known or he cannot reasonably communicate these facts to the assailant (such as where a defendant has barricaded himself some distance away) then the officer could proceed without concern over this requirement.

A private person may use force which he reasonably believes immediately necessary to make a lawful arrest or prevent an escape after a lawful arrest if, before using any force, he notifies the person to be arrested of his purpose and the reason for the arrest (unless he believes that such purpose and reason are already known or cannot reasonably be made known to the person to be arrested).

In order for a peace officer to use deadly force to effect an arrest (or to prevent escape after arrest), the officer must reasonably believe that the conduct authorizing the arrest included the use or attempted use of deadly force or that there is a substantial risk of death or serious bodily injury at the hands of the person sought to be arrested if the arrest is delayed.

A private citizen cannot use deadly force in making an arrest (or preventing an escape) unless he is in the presence of and acting at the direction of a peace officer and (1) the citizen is making an arrest for a felony or an offense against the public peace and an arrest for which authorized the use or attempted use of deadly force, or (2) there is substantial risk that the person sought to be arrested will cause death or serious bodily injury to another if arrest is delayed. There is no duty on the part of the police officer or the private citizen in making an arrest or preventing escape after arrest to retreat before using deadly force.

The Code permits the same use of force to prevent escape from custody as that used to effect the arrest under which the person is in custody (Section 9.52). Only a peace officer or guard of a penal institution may use deadly force to prevent the escape from jail, prison or other institution for the detention of persons convicted of or charged with a crime.

The Code justifies the use of force against a child younger than 18 years by the child's parent, step-parent or one acting *in loco parentis* for the purpose of discipline or to safeguard or promote the child's welfare (Sections 9.61, 9.62 and 9.63). Persons *in loco parentis* include grandparents, guardians, those acting by, through or under the direction of a court having jurisdiction over the child, or anyone with the express or implied consent of the parents. Presumably, this latter provision would cover the baby-sitter. The educator may use force against the student, no matter what the age of the student, if the educator is entrusted with the care, supervision, or administration of the person for a special purpose or to maintain discipline in a group. The guardian or someone responsible for the general care and supervision of a mental incompetent may use force to safeguard and promote the incompetent's welfare or if it is an institution, to maintain discipline in the institution. The use of deadly force in regard to these special relationships is prohibited.

Title 3. Punishments

Punishments now fall into categories of Capital, First, Second and Third-Degree Felonies, or Class A, B, or C Misdemeanors. See the chart on page 16.36 of the penalty ranges these classifications carry.

Subchapter D. Exceptional Sentences.

Section 12.42. Penalties for Repeat and Habitual Felony Offenders-

(a) If it be shown on the trial of a third-degree felony that the defendant has been once before convicted of *any* felony, on conviction he shall be punished for a second-degree felony.

(b) If it be shown on the trial of a second-degree felony that the defendant has been once before convicted of *any* felony, on conviction he shall be punished for a first-degree felony.

(c) If it be shown on the trial of a first-degree felony that the defendant has been once before convicted of *any* felony, on conviction he shall be punished by confinement in the Texas Department of Corrections for life, or for any term of not more than 99 years or less than 15 years.

(d) If it be shown on the trial of any felony offense that the defendant has previously been finally convicted of two felony offenses, and the second previous felony conviction is for an offense that occurred subsequent to the first previous conviction having become final, on conviction he shall be punished by confinement in the Texas Department of Corrections for life. (This retains the earlier "habitual offender" provision.)

Section 12.43. Penalties for Repeat and Habitual Misdemeanor Offenders-

(a) If it be shown on the trial of a Class A misdemeanor that the defendant has been before convicted of a Class A misdemeanor or *any* degree of felony, on conviction he shall be punished by confinement in jail for any term of not more than one year or less than 90 days.

(b) If it be shown on the trial of a Class B misdemeanor that the defendant has been before convicted of a Class A or Class B misdemeanor or *any* degree of felony, on conviction he shall be punished by confinement in jail for any term of not more than 180 days or less than 30 days.

Section 12.44. Reduction of Third-Degree Felony to Misdemeanor-

(a) A court may set aside a judgment or verdict of guilty of a felony of the third degree and enter a judgment of guilt and punish for a Class A misdemeanor if, after considering the gravity and circumstances of the felony committed and the history, character, and rehabilitative needs of the defendant, the court finds that such sentence would best serve the ends of justice.

(b) When a court is authorized to enter judgment of guilt and sentence for a lesser category of offense as provided in Subsection (a) of this section, the court may authorize the prosecuting attorney to prosecute initially for the lesser category of offense.

Subchapter E. Corporations and Associations.

Section 12.51. Authorized Punishment for Corporations and Associations- Corporations are only subject to fines. If the offense is punishable by a fine only, the corporation may not be fined in excess of the stated fine. If the offense may also be punished by prison or if no specific penalty is stated, the corporation may be fined no more than $10,000 for a felony, no more than $2,000 for a Class A or Class B misdemeanor, or $200 for a Class C misdemeanor. In lieu of these fines, a corporation guilty of gaining money or property by a felony or Class A or B misdemeanor may be fined any amount not to exceed double the amount gained.

Title 4. Inchoate Offenses

Chapter 15. Preparatory Offenses. There are three preparatory offenses as follows:

Section 15.01. Criminal Attempt-

(a) A person commits an offense if, with specific intent to commit an offense, he does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.

(b) If a person attempts an offense that may be aggravated, his conduct constitutes an attempt to commit the aggravated offense if an element that aggravates the offense accompanies the attempt.

(c) It is no defense to prosecution for criminal attempt that the offense attempted was actually committed.

(d) An offense under this section is one category lower than the offense attempted, and if the offense attempted is a felony of the third-degree, the offense is a Class A misdemeanor.

Section 15.02. Criminal Conspiracy-

(a) A person commits criminal conspiracy if, with intent that a felony be committed:

(1) he agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense; and

(2) he or one or more of them performs an overt act in pursuance of the agreement.

(b) An agreement constituting a conspiracy may be inferred from acts of the parties.

A conspiracy is similar to an attempt in that it is one degree lower than the offense contemplated.

Section 15.03. Criminal Solicitation-Criminal solicitation is a new offense so far as Texas law is concerned. Criminal solicitation is limited to capital felonies and felonies in the first degree. This occurs as follows:

(a) A person commits an offense if, with intent that a capital felony or felony of the first degree be committed, he requests, commands, or attempts to induce another to engage in specific conduct that, under the circumstances surrounding his conduct as the actor believes them to be, would constitute the felony or make the other a party to its commission.

(b) A person may not be convicted under this section on the uncorroborated testimony of the person allegedly solicited and unless the solicitation is made under circumstances strongly corroborative of both the solicitation itself and the actor's intent that the other person act on the solicitation.

Chapter 16. Criminal Instruments: *Section 16.01. Unlawful Use of Criminal Instrument*- Once again, a new concept is made a part of Texas law. A person commits a felony of the third degree if he possesses a criminal instrument (anything the possession, manufacture or sale of which is not otherwise an offense, that is specifically designed,

made or adapted for the commission of an offense) with intent to use it in the commission of an offense; or with knowledge of its character and with intent to use or aid or permit another to use in the commission of an offense, he manufactures, adapts, sells, installs, or sets up a criminal instrument.

Title 5. Offenses Against the Person

Chapter 19. Criminal Homicide: *Types of Criminal Homicide-*

(a) A person commits criminal homicide if he intentionally, knowingly, recklessly, or with criminal negligence causes the death of an individual.

(b) Criminal homicide includes murder, voluntary manslaughter, involuntary manslaughter, or criminally negligent homicide.

Section 19.02. Murder (first-degree felony)-

(a) A person commits an offense if he:

(1) intentionally or knowingly causes death,

(2) intentionally causes serious bodily injury which leads to death, or

(3) commits a felony and during the course of the felony causes death.

There is no longer any requirement of malice, nor is there an offense of murder with malice aforethought.

Section 19.03. Capital Murder-

(a) A person commits a capital felony if he commits murder as defined under Section 19.02(a)(1) of this code and:

(1) the person murdered is a peace officer or fireman who is acting in the lawful discharge of an official duty and who the accused knows is a peace officer or fireman;

(2) the murder is intentionally done in the course of committing or attempting to commit kidnapping, burglary, robbery, aggravated rape, or arson;

(3) the murder is for remuneration or another is employed to commit the murder for remuneration or the promise of remuneration;

(4) the murder is committed while escaping or attempting to escape from a penal institution; or

(5) while incarcerated in a penal institution, he murders another who is employed in the operation of the penal institution.

The punishment for capital murder is life or death.

Section 19.04. Voluntary Manslaughter (second-degree felony)-This is very similar to the old statute of murder without malice and is where one commits murder but acts under the immediate influence of a sudden passion arising from an adequate cause.

Section 19.05. Involuntary Manslaughter (third-degree felony)-This is applicable in two situations:

(1) where one recklessly causes the death of another, or

(2) where one is intoxicated and due to the intoxication kills another while operating a motor vehicle. (intoxication can be caused by alcohol, drugs, or any outside substance voluntarily taken into the body.)

Section 19.07. Criminally Negligent Homicide (Class A misdemeanor)-This is where one causes the death of another by criminal negligence, that is when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. There now has to be a gross deviation from that standard of care an ordinary person would use.

Chapter 20. Kidnapping and False Imprisonment: *Section 20.02. False Imprisonment* (Class B misdemeanor)-This is intentionally or knowingly restraining another (unless the victim is exposed to a substantial risk of serious bodily injury, in which case it is a third degree felony). It is a defense if the person restrained is a child under 14 and the actor was a relative with the sole intent of assuming lawful control of the child.

Section 20.03. Kidnapping (third-degree felony)-An offense occurs when one intentionally or knowingly abducts another person, *unless* the abduction was done without the use or threatened use of deadly force, *or* the actor was a relative of the person abducted *and* the sole intent was to assume lawful control of the person abducted.

Section 20.04. Aggravated Kidnapping (first-degree felony, unless the actor voluntarily releases the victim alive and in a safe place, then a second-degree felony)-This occurs where one commits kidnapping and in addition does one of the following acts:

(1) holds victim for ransom or reward,

(2) uses him as a shield or hostage,

(3) injures or sexually abuses the victim,

(4) terrorizes him or a third person,

(5) interferes with any governmental function, or

(6) facilitates the commission of a felony or the flight thereafter.

Chapter 21. Sexual Offenses: *Section 21.02. Rape* (second-degree felony)-Generally, this is where sexual intercourse is through the use of threats, force or fraud.

Section 21.03. Aggravated Rape (first-degree felony)-Rape is aggravated where serious bodily injury occurs or death is attempted in the same criminal episode, or where submission is compelled by threat of death, or serious bodily injury or kidnapping, to be immediately inflicted on anyone.

Section 21.04. Sexual Abuse and Section 21.05. Aggravated Sexual Abuse-These two statutes are violated in the same manner as rape and aggravated rape, and carry the same penalties. The only difference is that they apply where "deviate sexual intercourse" occurs. This means any contact between any part of the genitals of one person and the mouth and anus of another person, thereby intending to gratify the sexual desires of any person.

Section 21.06. Homosexual Conduct (Class C misdemeanor)- Homosexual conduct is deviate sexual intercourse with a member of the same sex.

Section 21.07. Public Lewdness (Class A misdemeanor)-This occurs where one carries on sexual intercourse or sexual contact in a public place with any person, or an animal or fowl, or is reckless about whether another will be offended or alarmed.

Section 21.08. Indecent Exposure (Class C misdemeanor)-This occurs where one exposes his or her anus or genitals with intent to arouse sexual desire of any person and is reckless about whether another is present who will be offended or alarmed.

Section 21.09. Rape of a Child (second-degree felony)-This occurs where there is consensual intercourse with a female not his wife and under 17. If the female is 14 or older and had promiscuously engaged in sexual conduct, there is no offense. Also, the accused must be over 2 years older than the victim to be convicted of this offense.

Section 21.10. Sexual Abuse of a Child (second-degree felony)-This is the same as Section 21.09 with regards to age and previous sexual conduct, but this offense consists of oral contact with the genitals of another.

Section 21.11. Indecency with a Child (third-degree felony)-This is the same as Section 21.09 insofar as the age is concerned, but consists of sexual contact with a child or exposing one's genitals or anus to a child.

Section 21.12. General Provisions-This provides that a male and female who cohabit will be treated as husband and wife insofar as Sections 21.02 through 21.05 are concerned. In other words, cohabitation will be a defense to rape and sexual abuse regardless of an actual legal marital status or whether the couple hold themselves out as husband and wife.

Section 21.13. This provides the evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct is admissible only if the trial judge finds that the evidence is:

(1) material to a fact at issue and,

(2) that its inflamatory as prejudicial nature does not outweight its probative value. The admissibility of such evidence has thus become discretionary with the trial judge.

Chapter 22. Assaultive Offenses: *Section 22.01. Assault*-An assault consists of:

(1) knowingly, recklessly, or intentionally causing bodily injury to another (Class A misdemeanor),

(2) threatening imminent bodily injury (Class C misdemeanor), or

(3) causing physical contact where he knows it will be offensive (Class C misdemeanor).

Section 22.02. Aggravated Assault (third-degree felony)-Aggravated assault is now a felony, but it has been limited to only the following three circumstances:

(1) causes serious bodily injury,

(2) causes bodily injury to one he knows is a peace officer in the lawful discharge of his duties, or

(3) uses a deadly weapon in making an assault.

Section 22.03. Deadly Assault on Officer (first-degree felony)-This occurs where one uses a firearm or *prohibited*** weapon and causes serious bodily injury to one he knows is a peace officer in the lawful discharge of his duties.
***(Section 46.06)*

Section 22.04. Injury to a Child (second-degree felony)-This occurs where one causes serious bodily injury or deformity or impairment to a child under 15. It should be noted this includes reckless or criminally negligent conduct, in addition to knowing and intentional conduct.

Section 22.05. Reckless Conduct (Class B misdemeanor)-This occurs where one recklessly places another in imminent danger of serious bodily injury. Recklessness and danger are presumed where one points a firearm (loaded or unloaded) at another's direction.

Section 22.07. Terroristic Threat-This occurs where one threatens to commit a crime of violence and:

(a) intends to cause a reaction by agencies organized to deal with emergencies (Class B misdemeanor).

(b) intends to place one in fear of imminent serious bodily injury (Class B misdemeanor), or

(c) intends to prevent use of a building, or assembly, or any public place or aircraft or auto or form of conveyance (Class A misdemeanor).

Section 22.08. Aiding Suicide (Class C misdemeanor)-This is where one aids or attempts to aid another in the commission of suicide. If the suicide or serious injury occurs, this is a third-degree felony.

Title 6. Offenses Against the Family

Chapter 25. Offenses Against the Family: *Section 25.01. Bigamy* (third-degree felony).

Section 25.02. Incest (third-degree felony)-This includes intercourse or deviate intercourse with relatives of the relationship of aunt, nephew, niece or closer, such as brother-sister, father-daughter. If the relationship is by adoption, or between a step-parent and step-child, the same rules apply.

Section 25.03. Interference with Child Custody (third-degree felony)-This occurs where one takes a child under 18 out of state either in violation of a court order or where he has not been awarded custody and knows a divorce action has been filed.

Section 25.04. Enticing a Child (Class B misdemeanor)-This occurs where one entices a child from those with lawful custody.

Section 25.05. Criminal Non-Support (Class A misdemeanor, second offense is a felony)-One must support children under 18 or a spouse in needy circumstances. If one cannot afford to contribute support (such as being unemployed and indigent), this is not an offense.

Title 7. Offenses Against Property

Chapter 28. Arson, Criminal Mischief, and Other Property Damage or Destruction: *Section 28.01. Definitions*-Under this section, "habitation" has been changed to include any structure or vehicle adapted for overnight accomodations.

Section 28.02. Arson (second-degree felony)-This is where one starts a fire or explosion of another's habitation or building. Also, it includes setting fire to one's own building in an effort to collect insurance. If bodily injury occurs, this is a first-degree felony.

Section 28.03. Criminal Mischief-This occurs where one knowingly or intentionally damages or destroys property of another or tampers with another's property where this causes a pecuniary loss or substantial inconvenience. As to what category of offense, this depends on the amount of the loss. The values have both substantially changed, not only for this offense but for all theft offenses. They are:

0	-	$ 5.00	Class C misdemeanor
$ 5.00	-	$ 20.00	Class B misdemeanor
$ 20.00	-	$ 200.00	Class A misdemeanor
$200.00	-	$10,000.00	Third degree felony
	Over	$10,000.00	Second degree felony

It is also a third degree felony where one maliciously impairs or interrupts public communications, public transportation or public services, or causes loss of cattle, horse, sheep, swine or goats or damages a fence holding these animals or misbrands the same animals regardless of the amount of pecuniary loss.

Section 28.04. Reckless Damage or Destruction-If one recklessly damages property, this is a Class C misdemeanor.

Section 28.06. Amount of Pecuniary Loss-The cost of the repairs governs unless destruction occurs, then it is the fair market value of replacement.

Chapter 29. Robbery: *Section 29.02. Robbery* (second-degree felony)-Robbery is a crime against the person and occurs by the commission of theft, coupled with either causing bodily injury or threatening bodily injury to death to another. The amount taken has no bearing on the offense.

Section 29.03. Aggravated Robbery (first-degree felony)-This is the same as robbery (29.02), but occurs where serious bodily injury is caused or a deadly weapon is used or exhibited.

Chapter 30. Burglary and Criminal Trespass: *Section 30.02. Burglary* (second-degree felony)-This occurs where one enters a building with intent to commit a felony or theft. Entry means any entry of any part of the body or object connected to the body. Also, to enter lawfully and remain concealed is a burglary.

Burglary is a *first-degree felony* if the building is a habitation (this includes a vehicle adapted for overnight use), or the burglar is armed (including explosives) or any injury is inflicted or attempted by the burglar while he is in or fleeing from the building.

Section 30.03. Burglary of Coin Operated Machines (Class A misdemeanor)-This offense is the same as it was in the old code, but is now a misdemeanor.

Section 30.04. Burglary of Vehicles (third-degree felony)-This occurs where one intends to commit a felony or any theft at the time the unauthorized entry of a vehicle is made. Entry means intrusion by any part of the body or any object attached to the body.

Section 30.05. Criminal Trespass-A person commits an offense if he enters or remains on property or in a building of another without effective consent and he:

(1) had notice that the entry was forbidden; or

(2) received notice to depart but failed to do so.

For purposes of this section:

(a) "entry" means the intrusion of the entire body; and

(b) "notice" means:

(1) oral or written communication by the owner or someone with apparent authority to act for the owner;

(2) fencing or other enclosure obviously designed to exclude intruders; or

(3) signs posted to be reasonably likely to come to the attention of intruders.

An offense under this section is a Class C misdemeanor unless it is committed in a habitation, in which event it is a Class A misdemeanor.

Chapter 31. Theft: *Section 31.02. Consolidation of Theft Offenses*-The previous offenses of theft, theft by bailee, theft by false pretext, theft from person, shoplifting, swindling, hot checks, embezzlement, extortion, and receiving stolen property are now the single offense of theft.

Section 31.03. Theft-Receiving stolen property is now called theft and has been changed significantly.

(1) Evidence that the defendant previously participated in recent transactions other than, but similar to, that which the prosecution is based is admissible for the purpose of showing knowledge or intent.

(2) The testimony of an accomplice shall be corroborated by proof that tends to connect the defendant to the crime, but the defendant's knowledge or intent may be established by the uncorroborated testimony of the accomplice.

The classification of offense for theft is the same as criminal mischief. See Section 28.03.

Section 31.04. Theft of Service-The statute uses the same value system for determining classification of offense as theft.

(a) A person commits theft of service if, with intent to avoid payment for service that he knows is provided only for compensation:

(1) he intentionally or knowingly secures performance of service by deception, threat, or false token; or

(2) having control over the disposition of services of another to which he is not entitled, he intentionally or knowingly diverts the other's services to his own benefit or to the benefit of another not entitled to them.

(b) For purposes of this section, intent to avoid payment is presumed if the actor absconded without paying for the service in circumstances where payment is ordinarily made immediately upon rendering of the service, as in hotels, restaurants, and comparable establishments.

Section 31.05. Theft of Trade Secrets-A person commits a felony of the third degree if he steals, copies, or transmits a trade secret, which is defined as "the whole or any part of any scientific or technical information, design, process, procedure, formula, or improvement that has value and that the owner has taken measures to prevent from becoming available to persons other than those selected by the owner to have access for limited purposes."

Section 31.06. Presumption for Theft by Check-Basically, the hot check laws are the same as present law except the value (for classification of the offense), which is the same as the new theft statute.

Section 31.07. Unauthorized Use of Vehicle (third-degree felony)-No property values are applicable here. It is always a felony to operate another's boat, airplane, or motor propelled vehicle without consent of owner.

Section 31.08. Value-The fair market value or replacement value are used in determining value. If a document does not have a market value, the greatest amount of economic loss the owner could suffer would be the value.

Section 31.09. Aggregation of Amounts Involved in Theft-This is an entirely new concept under Texas law. This statute provides:

> "When amounts are obtained in violation of this chapter pursuant to one scheme or continuing course of conduct whether from the same or several sources, the conduct may be considered as one offense and the amounts aggregated in determining the grade of the offense."

Therefore, if one should steal five $50.00 bicycles over a short period of time, he could be charged with the single offense of felony theft for the total $250.00 aggregate amount. You would have to allege and prove the five thefts to successfully prosecute the case as a felony.

Chapter 32. Fraud:

Subchapter B. Forgery.

Section 32.21. Forgery-This statute is generally the same as our present forgery and passing laws. Forgery now includes passing or uttering a forged instrument. Forgery of a check, will, mortgage, security instrument, deed, credit card, or commercial paper is a third-degree felony. Forgery of United States currency, stamps, or governmental bonds or securities is a second-degree felony.

Section 32.22. Criminal Simulation (Class A misdemeanor)- This is a new statute. A person commits an offense if, with intent to defraud or harm another:

(1) he makes or alters an object, in whole or in part, so that it appears to have value because of age, antiquity, rarity, source, or authorship that it does not have;

(2) he sells, passes, or otherwise utters an object so made or altered;

(3) he possesses an object so made or altered, with intent to sell, pass or otherwise utter it; or

(4) he authenticates or certifies an object so made or altered as genuine or as different from what it is.

Subchapter C. Credit.

Section 32.31. Credit Card Abuse (third-degree felony)- Generally this statute remains unchanged. Credit card abuse includes:

(1) use of the card without the effective consent of the cardholder, or

(2) use of a fictitious credit card or the pretended number of a fictitious credit card;

(3) receipt of property or service obtained in violation of this section;

(4) theft of a credit card, or, with knowledge that it has been stolen, receipt of a credit card with intent to use it;

(5) buying a credit card from a person known not to be the issuer;

(6) not being the issuer, selling a credit card;

(7) inducing the cardholder to use the cardholder's credit to obtain property or service for the actor's benefit for which the cardholder is financially unable to pay;

(8) without the effective consent of the cardholder, signing or writing one's name or the name of another on a credit card;

(9) possessing two or more incomplete credit cards that have not been issued to him with intent to complete them;

(10) being authorized by an issuer to furnish goods or services on presentation of a credit card, he with intent to defraud the issuer or the cardholder, furnishes goods or services on presentation of a credit card obtained or retained in violation of this section or a credit card that is forged, expired, or revoked; or

(11) being authorized by an issuer to furnish goods or services, he fails to furnish goods or services that he represents in writing to the issuer that he has furnished.

Section 32.32. Hindering Secured Creditors-If mortgaged property is removed from the state, it is a third-degree felony. If a person damages, destroys or transfers the property in an effort to hinder the lienholders' rights, it is a Class A misdemeanor.

For purposes of this section, a person is presumed to have intended to hinder enforcement of the security interest or lien if, when any part of the debt secured by the security interest or lien was due, he failed:

(1) to pay the part then due; and

(2) if the secured party had made demand, to deliver possession of the secured property to the secured party.

Section 32.34. Fraud in Insolvency (Class A misdemeanor)-This is a new offense that deals with hindering creditors during a bankruptcy proceeding.

Section 32.35. Receiving Deposit, Premium, or Investment in Failing Financial Institution (Class A misdemeanor)-This is a new offense. It is committed by a person who accepts a deposit on behalf of a financial institution when he knows the institution is insolvent.

Subchapter D. Other Deceptive Practices.

Section 32.41. Issuance of Bad Check-This section makes it an offense to issue a bad check. It is not necessary under this offense that the person giving the check receive anything in return for the check. The basis for the offense is that one who places a worthless piece of paper in the channels of commerce should be guilty of some type crime. The offense is a Class C misdemeanor and the charges would be filed either in the municipal court or in the justice of the peace court.

Section 32.42. Deceptive Business Practices (Class A or C misdemeanor)-This section makes offenses of the following deceptive business practices when committed either knowingly, recklessly, or negligently;

(1) using, selling, or possessing for use or sale a false weight measure, or any other device for falsely determining or recording any quality or quantity;

(2) selling less than the represented quantity of property or service;

(3) taking more than the represented quantity of property or service when as a buyer the actor furnishes the weight or measure;

(4) selling an adulterated or mislabeled commodity;

(5) passing off property or service as that of another;

(6) representing that a commodity is original or new if it is deteriorated, altered, rebuilt, reconditioned, reclaimed, used or second-hand;

(7) representing that a commodity or service is of a particular style, grade or model if it is of another;

(8) advertising property or service with intent:

(a) not to sell it as advertised, or

(b) not to supply reasonably expectable public demand, unless the advertising adequately discloses a time or quantity limit;

(9) representing the price of property or service falsely or in a way tending to mislead;

(10) making a materially false or misleading statement of fact concerning the reason for, existence of, or amount of a price or price reduction;

(11) conducting a deceptive sales contest; or

(12) making a materially false or misleading statement:

(a) in an advertisement for the purchase or sale of property or service; or

(b) otherwise in connection with the purchase or sale of property or service.

Section 32.43. Commercial Bribery (third-degree felony)-This makes it a crime for a fiduciary (lawyer, agent or employee, executor, etc.) to solicit or accept any benefit in consideration for harming the beneficiary or violating a duty to the beneficiary.

Section 32.44. Rigging Public Contest (Class A misdemeanor)-The offense consists of offering or giving something to a contestant not to do his best or to an official or to tamper with an athlete or animal or object involved in the contest. The person accepting the benefit is equally guilty.

Section 32.45. Misapplication of Fiduciary Property or Property of Financial Institution-If one knowingly or recklessly misapplies property he holds in this capacity (trustee, bank teller, etc.) he is guilty of a Class A misdemeanor (under $200), third-degree felony ($200 to $10,000), second degree felony (over $10,000).

Section 32.46. Securing Execution of Document by Deception (third-degree felony).

Section 32.47. Fraudulent Destruction, Removal, or Concealment of Writing (Class A misdemeanor)-If with intent to defraud, one destroys, removes, conceals, alters or substitutes any writing which includes:

(1) printing or any other method of recording information;

(2) money, coins, tokens, stamps, seals, credit cards, badges, trademarks;

(3) symbols of value, right, privilege, or identification; and

(4) labels, price tags, or markings on goods.

Note: this is a third-degree felony if a will, deed, mortgage or any writing for which the law provides for a public recording is involved.

Section 32.48. Endless Chain Scheme (Class B misdemeanor)-If one participates in an endless chain scheme, which means "any scheme for the disposal or distribution of property whereby a participant pays a valuable consideration for the chance to receive compensation for introducing one or more additional persons into participation in the scheme or for the chance to receive compensation when a person introduced by the participant introduces a new participant," he violates this section.

Title 8. Offenses Against Public Administration

Chapter 36. Bribery and Corrupt Influence: *Section 36.01. Definitions-"Coercion"* means a threat, however communicated:

(a) to commit an offense;

(b) to inflict bodily injury on the person threatened or another;

(c) to accuse any person of any offense;

(d) to expose any person to hatred, contempt, or ridicule;

(e) to harm the credit or business repute of any person; or

(f) to take or withhold action as a public servant, or to cause a public servant to take or withhold action.

Section 36.02. Bribery-One who intentionally or knowingly offers, confers, or agrees to confer on another, solicits or accepts from another any pecuniary or other benefit for recipient's influence commits a felony of the second degree.

Section 36.03. Coercion-One who coerces a public official commits a Class A misdemeanor unless the coercion is a threat to commit a felony on the official, then it is a third-degree felony.

Section 36.04. Improper Influence (Class A misdemeanor)-This is entirely new and provides that a person commits an offense if he privately addresses a representation, entreaty, argument, or other communication to any public servant who exercises or will exercise official discretion in an adjudicatory proceeding with an intent to influence the outcome of the proceeding on the basis of considerations other than those authorized by law.

An "adjudicatory proceeding" means any proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.

Section 36.05. Tampering with Witness (felony of the third degree)-This offense consists of one bribing or coercing a witness to:

(1) testify falsely;

(2) withhold any testimony, information, document, or thing;

(3) elude legal process summoning him to testify or supply evidence; or

(4) absent himself from an official proceeding to which he has been legally summoned.

The witness is guilty if he solicits or accepts a benefit.

Section 36.06. Retaliation (felony of the third degree)-This occurs where one harms or threatens harm by an unlawful act in retaliation to another who has acted as a public servant, witness, or informant.

Section 36.07. Compensation for Past Official Behavior (Class A misdemeanor)-This occurs where one pays or offers to pay a public servant *after* the public servant has acted on an official matter. The public servant who solicits or accepts payment is equally guilty.

Section 36.08. Gift to Public Servant by Person Subject to his Jurisdiction (Class A misdemeanor)-This applies to public servants:

(1) in judicial positions,

(2) those having custody of prisoners,

(3) those in administrative positions,

(4) those in legislative positions and

(5) those exercising discretion in regards to contracts, purchase, or any other pecuniary governmental transactions.

It also prohibits any public servant from accepting or soliciting any pecuniary benefit from one who might be affected by or subject to his official actions.

Section 36.09. Offering Gift to Public Servant (Class A misdemeanor)-This offense consists of the offering or giving to a public servant any benefit mentioned in Section. 36.08.

Section 36.10. Not Applicable-It is not unlawful to accept a lawful fee, a trivial benefit, a gift from a relative or business associate, or a political contribution.

Chapter 37. Perjury and Other Falsification: *Section 37.02. Perjury* (Class A misdemeanor)-This is a false statement under oath, where the statement is required or authorized by law to be made under oath.

Section 37.03. Aggravated Perjury (felony of the third degree)-This is perjury-as defined above-and made in connection with an official proceeding (such as in court). The statement made must be material.

Section 37.05. Retraction-It is a defense to Section 37.03 that one retracts his statement before completion of the official proceeding and before it became manifest that the falsity would be exposed.

Section 37.06. Inconsistent Statements-An information or indictment for perjury or aggravated perjury that alleges that the declarant has made statements under oath, both of which such statements cannot be true, need not allege which statement is false and the prosecution is not required to prove which statement is false.

Section 37.07. Irregularities No Defense-Any irregularity in taking the oath or in the notary's jurat is not a defense.

Section 37.08. False Report to Peace Officer (Class B misdemeanor)-A person commits an offense if he:

(1) reports to a peace officer an offense or incident within the officer's concern, knowing that the offense or incident did not occur; or

(2) makes a report to a peace officer relating to an offense or incident within the officer's concern knowing that he has no information relating to the offense or incident.

Section 37.09. Tampering with or Fabricating Physical Evidence (Class A misdemeanor)-A person commits an offense if, knowing that an investigation or official proceeding is pending or in progress, he:

(1) alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evendice in the investigation or official proceeding; or

(2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent to affect the course or outcome of the investigation or official proceeding.

Section 37.10. Tampering with Governmental Record (Class A misdemeanor unless the intent is to defraud or harm another, in which case the offense is a felony of the third degree)-A person commits an offense if he:

(1) knowingly makes a false entry in, or false alteration of a governmental record;

(2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record; or

(3) intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record.

Section 37.11. Impersonating Public Servant (Class A misdemeanor unless the person impersonated a peace officer, in which event it is a felony of the third degree)-A person commits an offense if he impersonates a public servant with intent to induce another to submit to his pretended official authority or to rely on his pretended official acts.

Chapter 38. Obstructing Governmental Operation: *Section 38.02. Failure to Identify as Witness* (Class C misdemeanor)-A person commits an offense if he intentionally refuses to report or give a false report of his name and residence address to a peace officer who has lawfully stopped him and requested the information.

Section 38.03. Resisting Arrest or Search (Class A misdemeanor)-A person commits an offense if, by using force against the peace officer or another, he intentionally prevents or obstructs a person he knows is a peace officer or a person acting in a peace officer's presence and at his direction from effecting his or another's arrest or search.

It is no defense to prosecution under this section that the arrest or search was unlawful.

NOTE: Where a deadly weapon is used, this is a felony of the third degree.

Section 38.04. Evading Arrest (Class B misdemeanor)-A person commits an offense if he knowingly flees from a peace officer who is attempting to arrest him. If arrest is unlawful it is not an offense.

Section 38.05. Hindering Apprehension or Prosecution (Class A misdemeanor)-A person commits an offense if, with intent to hinder the arrest, prosecution, conviction, or punishment of another for an offense, he:

(1) harbors or conceals the other;

(2) provides or aids in providing the other with any means of avoiding arrest or effecting escape; or

(3) warns the other of impending discovery or apprehension.

Section 38.06. Compounding (Class A misdemeanor)-A complaining witness commits an offense if, after criminal proceedings have been instituted, he solicits, accepts, or agrees to accept any benefit in consideration of abstaining from, discontinuing, or delaying the prosecution of another for an offense.

Section 38.07. Escape-One who is arrested, charged, or convicted who escapes from custody is guilty of a Class A misdemeanor (unless it is a felony arrest, charge or conviction in which it is a felony of the third degree). Should he use or threaten to use a deadly weapon in escaping, it is a felony of the second degree.

Section 38.08. Permitting or Facilitating Escape-Where a guard or official of a penal institution helps one escape, it is a Class A misdemeanor, unless a felony is involved, then it is a felony of the third degree.

Section 38.11. Bail Jumping and Failure to Appear-Where one fails to appear in court, the offense is a Class A misdemeanor, unless the original offense was punishable by fine only in which case the offense is a Class C misdemeanor. If the original offense was a felony, failure to appear in court is a felony of the third degree.

Section 38.13. Hindering Proceedings by Disorderly Conduct (Class A misdemeanor)-A person commits an offense if he uses violent or noisy behavior to disturb an official proceeding.

Chapter 39. Abuse of Office: *Section 39.01. Official Misconduct* (Class A misdemeanor)-A public servant commits an offense if, with intent to obtain a benefit for himself or to harm another, he intentionally or knowingly;

(1) commits an act relating to his office or employment that constitutes an unauthorized exercise of his official power;

(2) commits an act under color of his office or employment that exceeds his official power;

(3) refrains from performing a duty that is imposed on him by law or that is clearly inherent in the nature of his office or employment;

(4) violates a law relating to his office or employment; or

(5) takes or misapplies any thing of value belonging to the government that may have come into his custody or possession by virtue of his employment or secrets it with intent to take or misapply it, or pays or delivers it to any person knowing that such person is not entitled to receive it.

Section 39.02. Official Oppression (Class A misdemeanor)-A public servant commits an offense if he:

(1) intentionally subjects another to mistreatment or to arrest, detention, search seizure, dispossession, assessment, or lien that he knows is unlawful; or

(2) intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful.

Section 39.03. Misuse of Official Information (Class A misdemeanor)-A public servant may neither acquire any pecuniary interest nor speculate on the basis of information obtained in his official capacity which has not been made public. Likewise, he may not help another to do so.

Title 9. Offenses Against Public Order and Decency

Chapter 42. Disorderly Conduct and Related Offenses: *Section 42.01. Disorderly Conduct* (Class C misdemeanor except Numbers 8 and 9, which are Class B misdemeanors)-A person commits an offense if he intentionally or knowingly:

(1) uses abusive, indecent, profane, or vulgar language in a public place, and the language by its very utterance tends to incite an immediate breach of the peace;

(2) makes an offensive gesture or display in a public place, and the gesture or display tends to incite an immediate breach of the peace;

(3) creates, by chemical means, a noxious and unreasonable odor in a public place;

(4) abuses or threatens a person in a public place in an obviously offensive manner;

(5) makes unreasonable noise in a public place or in or near a private residence that he has no right to occupy;

(6) fights with another in a public place;

(7) enters on the property of another and for a lewd or unlawful purpose looks into a dwelling on the property through any window or other opening in the dwelling;

(8) discharges a firearm in a public place;

(9) displays a firearm or other deadly weapon in a place in a manner calculated to alarm; or

(10) exposes his anus or genitals in a public place and is reckless about whether another may be present who will be offended or alarmed by his act.

Section 42.02. Riot (Class B misdemeanor)-Riot means the assemblage of seven or more persons resulting in conduct which:

(1) creates an immediate danger of damage to property or injury to persons;

(2) substantially obstructs law enforcement or other governmental functions or services; or

(3) by force, threat of force, or physical action deprives any person of a legal right or disturbs any person in the enjoyment of a legal right.

An exception to the general penalty classification is that an offense under this section is an offense of the same classification as any offense of a higher grade committed by anyone engaged in the riot if the offense was:

(1) in the furtherance of the purpose of the assembly; or

(2) an offense which should have been anticipated as a result of the assembly.

Section 42.03. Obstructing Highway or Other Passageway (Class B misdemeanor)-

(a) A person commits an offense if, without legal privilege or authority, he intentionally, knowingly, or recklessly:

(1) obstructs a highway, street, sidewalk, railway, waterway, elevator, aisle, hallway, entrance, or exit to which the public or a substantial group of the public has access, or any other place used for the passage of persons, vehicles, or conveyances; or

(2) disobeys a reasonable request or order to move issued by a person the actor knows to be or is informed is a peace officer, a fireman, or a person with authority to control the use of the premises:

(A) to prevent obstruction of a highway or any of those areas mentioned in Subdivision (1) of this subsection; or

(B) to maintain public safety by dispersing those gathered in dangerous proximity to a fire, riot, or other hazard.

Section 42.04. Defense When Conduct Consists of Speech or Other Expression-(a) If the conduct consists of speech or other communication to express in a nonviolent manner a position of social, economic, political, or religious questions, the actor must be ordered to move, disperse, or otherwise remedy the violation prior to his

arrest if he has not yet intentionally harmed the interests of others which those sections seek to protect.

(b) The order required by this section may be given by a peace officer, a fireman, a person with authority to control the use of the premises, or any person directly affected by the violation.

If he is not so ordered, or the order given was manifestly unreasonable in scope or was promptly obeyed, it is a defense to prosecution under Section 42.01 (5) or Section 42.03.

Section 42.05. Disrupting Meeting or Procession (Class B misdemeanor)- A person commits an offense by preventing or disrupting a lawful meeting or gathering, either by physical action or verbal utterance.

Section 42.06. False Alarm or Report (Class A misdemeanor)-An offense is commited when one communicates a report of a present, past, or future bombing, fire, offense, or other emergency that he knows is false, that would ordinarily:

(1) cause action by an official or volunteer agency organized to deal with emergencies;

(2) place a person in fear of imminent serious bodily injury; or

(3) prevent or interrupt the occupation of a building, room, place of assembly, place to which the public has access, or aircraft, automobile, or other mode of conveyance.

Section 42.07. Harassment (Class B misdemeanor)-This offense involves communication by telephone or in writing in vulgar, profane, obscene, or indecent language or in a coarse and offensive manner, which intentionally, knowingly, or recklessly annoys or alarms the recipient. Threatening by telephone or in writing to take unlawful action against any person and by such action intentionally, knowingly, or recklessly annoying or alarming the recipient: placing one or more telephone calls anonymously, at an unreasonable hour, in an offensive and repititious manner, or without a legitimate purpose of communication which intentionally, knowingly, or recklessly alarms the recipient is also an offense.

Section 42.08. Public Intoxication (Class C misdemeanor)-This offense is appearing in a public place under the influence of alcohol or any substance, to the degree that one may endanger himself or another.

A peace officer or magistrate may release from custody an individual arrested under this section if he believes imprisonment is unnecessary for the protection of the individual or others.

It is a defense that the alcohol or other substance was administered by a physician.

Section 42.09. Desecration of Venerated Object (Class A misdemeanor)-This is knowingly or intentionally desecrating a public monument, a place of worship or burial, or a state or national flag.

Desecrate means deface, damage, or otherwise physically mistreat in a way that the actor knows will seriously offend one or more persons likely to observe or discover his action.

Section 42.10. Abuse of Corpse (Class A misdemeanor)-This includes disinterment, sale, traffic in, dissection, or concealment of a human corpse.

Section 42.11. Cruelty to Animals (Class A misdemeanor)-

(a) A person commits an offense if he intentionally or knowingly:

(1) tortures or seriously overworks an animal,

(2) fails unreasonably to provide necessary food, care, or shelter for an animal in his custody,

(3) abandons unreasonably an animal in his custody,

(4) transports or confines an animal in a cruel manner,

(5) kills or injures, or administers poisons to an animal other than cattle, horses, sheep, swine, or goats belonging to another without legal authority or the owner's effective consent, or

(6) causes one animal to fight with another.

Animal means a domesticated living creature and wild living creature previously captured. Bona fide experimentation for scientific research is a defense to this crime.

Chapter 43. Public Indecency:

Subchapter A. Prostitution.

Section 43.02. Prostitution (Class C misdemeanor)-

(a) A person commits an offense if he knowingly;

(1) offers to engage or engages in sexual conduct for a fee payable to the actor; or

(2) solicits another in a public place to engage with him in sexual conduct for hire.

(b) An offense is established under (a) (2) whether the actor solicits a person to hire him or offers to hire the person solicited.

(c) This is a Class B misdemeanor on second conviction.

To prove up the first conviction, the preferred practice would be for the officer to have witnessed the prostitute's plea of guilty before the corporation or justice court so it can be proved she is one and the same.

Section 43.03. Promotion of Prostitution (Class A misdemeanor)-A person commits an offense if, acting other than as a prostitute, he knowingly receives money or other property pursuant to an agreement to participate in the proceeds of prostitution.

Section 43.04. Aggravated Promotion of Prostitution (Felony of the third degree)-This offense is knowingly owning, investing, financing, controlling, supervising, or managing a prostitution enterprise that consists of two or more prostitutes.

Section 43.05. Compelling Prostitution (Felony of the second degree)-A person commits an offense if he knowingly:

(1) causes another by force, threat, or fraud to commit prostitution; or

(2) causes by any means a person younger than 17 years to commit prostitution.

Section 43.06. Accomplice Witness: Testimony and Immunity-A party to an offense under this subchapter may be required to furnish evidence or testify about the offense, but he may not be prosecuted for any offense about which he is required to testify.

A conviction under this subchapter (Prostitution) may be had by the uncorroborated testimony of a party to the offense.

Subchapter B. Obscenity.

Section 43.21. Definitions-Before material is obscene, it must have as a whole a dominant theme that:

(a) Appeals to the prurient interest of the average person applying contemporary community standards;

(b) depicts or describes sexual conduct in a patently offensive way; and

(c) lacks serious literary, artistic, political, or scientific value.

Section 43.22. Obscene Display or Distribution (Class C misdemeanor)-A person commits an offense if he intentionally or knowingly displays or distributes an obscene photograph, drawing or other obscene material and is reckless about whether a person is present who will be offended or alarmed.

Section 43.23. Commercial Obscenity (Class B misdemeanor)-A person commits an offense if, knowing the content of the material, he:

(1) sells, commercially exhibits, or possesses for sale any obscene material;

(2) presents or directs an obscene play, dance or performance, or participates in that portion of the play, dance, or performance that makes it obscene; or

(3) hires or uses a person under the age of 17 years to achieve any of the above purposes. (This violation is a Class A misdemeanor.)

It is an affirmative defense to prosecution under this section that the obscene material was possessed by a person having scientific, educational, governmental, or other similar justification.

Section 43.24. Sale, Distribution, or Display of Harmful Material to Minor (Class A misdemeanor)-

(1) "minor" means an individual younger than 17 years.

(2) "Harmful material" means material whose dominant theme taken as a whole:

(a) appeals to the prurient interest of a minor, in sex, nudity or excretion;

(b) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and

(c) is utterly without redeeming social value for minors.

A person commits an offense if, knowing that the material is harmful:

(1) and knowing the person is a minor, he sells, distributes, exhibits, or possesses for sale, distribution, or exhibition to a minor harmful material;

(2) he displays harmful material and is reckless about whether a minor is present who will be offended or alarmed; or

(3) he hires or uses a minor in doing or accomplishing any of the above acts. (Violation of this subsection is a third-degree felony).

It is a defense to prosecution under this section that:

(1) the sale, distribution or exhibition was by a person having scientific, educational, governmental, or other similar justification; or

(2) the sale, distribution, or exhibition was to a minor who was accompanied by a consenting parent, guardian, or spouse.

Title 10. Offenses Against Public Health, Safety and Morals

Chapter 46. Weapons: *Section 46.01. Chapter Definitions-*

(1) "Handgun" means any device designed, made, or adapted to be fired with one hand.

(2) "Illegal Knife" means a

(a) knife with a blade over five and one-half inches,

(b) a hand instrument designed to cut or stab another by being thrown;

(c) dagger, including but not limited to a dirk, stilleto and poniard,

(d) bowie knife,

(e) sword, or

(f) spear.

(3) "Club" means an instrument made or adapted for the purpose of inflicting serious bodily injury or death by striking a person with the instrument.

(4) "Short-barrel firearm" means a rifle with a barrel length of less than 16 inches, or a shotgun with a barrel length of less than 18 inches, or any weapon made from a shotgun or rifle if, as altered, it has an overall length of less than 26 inches.

Section 46.02. Unlawful Carrying Weapons (Class A misdemeanor)-

(a) A person commits an offense if he intentionally knowingly, or recklessly carries on or about his person a handgun, illegal knife, or club.

(b) An offense under this section is a felony of the third degree if it occurs on any premises licensed for the sale or service of alcoholic beverages.

Section 46.03. Non-Applicable-The provisions of Section 46.02of this code do not apply to a person:

(1) in the actual discharge of his official duties as a peace officer, a member of the armed forces or national guard, or guard employed by a penal institution;

(2) on his own premises or premises under his control;

(3) traveling; or

(4) engaging in lawful hunting or fishing or other sporting activity if the weapon is a type commonly used in the activity.

Section 46.04. Places Weapons Prohibited (Class A misdemeanor)-

(a) A person commits an offense if, with a firearm, he intentionally knowingly, or recklessly goes;

on the premises of a school or an educational institution, whether public or private, unless pursuant to written regulations or written authorization of the institution; or

(2) on the premises of a polling place on the day of the election.

(b) It is a defense to prosecution under this section that the actor was in the actual discharge of his official duties as a peace officer or a member of the armed forces or national guard.

Section 46.05. Unlawful Possession of Firearms by Felon~(Felony of the third degree)-When one has been convicted of a felony involving an act of violence or *threatened* violence, it is unlawful to possess a fiream away from the premises where he lives.

Section 46.06. Prohibited Weapons (Felony of the second degree if weapons (1) through (4) are involved; Class A misdemeanor if a switchblade knife or knuckles are involved.)

(a) A person commits an offense if he intentionally or knowingly possesses, manufactures, transports, repairs, or sells:

(1) an explosive weapon;

(2) a machine gun;

(3) a short-barrel firearm;

(4) a firearm silencer;

(5) a switchblade knife; or

(6) knuckles.

(b) It is a defense that the conduct was incidental to official duty by the armed forced or national guard, a governmental law enforcement agency, or a penal institution.

(c) It is a defense to prosecution under this section that the actor' possession was pursuant to registration pursuant to the National Firearms Act, as amended.

(d) It is an affirmative defense to prosecution under this section that the actor's conduct was incidental to dealing with a switchblade knife, springblade knife, or short-barrel solely as an antique or curio.

Section 46.07. Unlawful Transfer of Firearm (Class A misdemeanor)-This occurs where one:

(1) knowing the weapon is to be used in the commission of an unlawful act, sells, rents, loans, or gives a handgun to any person;

(2) knowingly sells, rents, or gives or offers to sell, rent or give to any child younger than 18 years; or

(3) knowingly or recklessly sells a firearm or ammunition for a firearm to any person who is intoxicated.

It is a defense that the transfer or sale was to a minor who has written or oral permission from his parent.

Chapter 47. Gambling: *Section 47.02. Gambling* (Class C misdemeanor)-This occurs where one:

(1) makes a bet on a game or contest or on the performance of a participant;

(2) makes a bet on the result of any political nomination, appointment, or election; or

(3) plays and bets for money or other thing of value at any game played with cards, dice, or balls.

It is a defense to prosecution under this section and Section 47.04 if:

(1) the actor engaged in gambling in a private place;

(2) no person received any economic benefit other than personal winnings; and

(3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.

Section 47.03. Gambling Promotion (Felony of the third degree)-This offense is commited when a person intentionally or knowingly:

(1) operates or participates in the earnings of a gambling place; or

(2) receives, records, or forwards a bet or offer to bet; or

(3) for gain, becomes a custodian of anything of value bet or offered to be bet; or

(4) sells chances on the partial or final result of or on the margin of victory in any game or contest or on the performance of any participant in any game or contest or on the result of any political nomination, appointment, or election or on the degree of success of any nominee, appointee, or candidate; or

(5) for gain, sets up or promotes any lottery or sells or offers to sell or knowingly possesses for transfer, or transfers any card, stub, ticket, check, or other device designed to serve as evidence of participating in any lottery.

Section 47.04. Keeping a Gambling Place (Felony of the third degree.)

Where one uses or permits another to use as a gambling place any real estate, building, room, tent, vehicle, boat, or other property owned by him or under his control, or rents property with an expectation that it be so used.

The same defenses that are applicable to Section 47.02 apply here.

Section 47.05. Communicating Gambling Information (Felony of the third degree)-Where one with the intent to further gambling, knowingly communicates information as to bets, betting odds, or changes in betting odds or he knowingly provides, installs, or maintains equipment for the transmission or receipt of this information.

Section 47.06. Possession of Gambling Device or Equipment (Felony of the third degree)-Where one knowingly owns, manufactures, transfers, or possesses any gambling device that he knows is designed for gambling purposes or any equipment that he knows is designed to be an essential part of a gambling device.

Section 47.07. Possession of Gambling Paraphernalia (Class A misdemeanor)-Where one, with the intent to further gambling, knowingly owns, manufactures, transfers commercially, or possesses gambling paraphernalia.

Section 47.08. Evidence-Proof that the defendant communicated gambling information or possessed a gambling device, equipment or paraphernalia is prima facie evidence that he did so knowingly and with the intent to further gambling.

Section 47.09. Testimonial Immunity-A party to an offense under this chapter may be required to furnish evidence or testify about the offense but may not be prosecuted for any offense about which he is required to testify, and a conviction under this chapter may be had upon the uncorroborated testimony of a party to the offense.

Chapter 48. Smoking Tobacco: *Section 48.01. Smoking Tobacco* (Class C misdemeanor)-Smoking tobacco or possession of burning tobacco is illegal in certain public places as long as a notice is prominently displayed and the public place is equipped with facilities for extinguishment.

The Conforming Amendments to the Penal Code

The 63rd Legislature passed a number of conforming amendments to the Code of Criminal Procedure. Among the most significant articles amended are:

Article 21.15. Must allege acts of recklessness or criminal negligence.

Whenever recklessness or criminal negligence is a part of any offense, the complaint, information, or indictment in order to be sufficient must allege, with reasonable certainty, the act or acts relied upon to constitute recklessness or criminal negligence. It is *not* sufficient to allege merely that the accused acted recklessly or with criminal negligence. Reports by law enforcement agencies should state in great detail the specific acts which constitute recklessness or criminal negligence.

Chapter 12-Limitation. The Code of Criminal Procedure is amended as follows:

Article 12.01. Felonies.

There is little change except with regard to sexual offenses. The Statute of Limitations is:

1. no limitation: murder and manslaughter;
2. ten years: theft by a public servant of government property over which he exercises control in his official capacity; forgery and passing:
3. five years: theft, burglary, robbery and arson;
4. one year: any felony in Penal Code Chapter 21 (Sexual Offenses);
5. three years: all other felonies;

Article 12.02. Misdemeanors.

Two years: any misdemeanor.

Article 12.03. Aggravated offenses, attempt, conspiracy, solicitation.

1. The limitation period for criminal attempt is the same as that of the offense attempted.
2. The limitation period for criminal conspiracy is the same as that of the most serious offense that is the object of the conspiracy.
3. The limitation period for criminal solicitation is the same as that of the felony solicited.
4. Any offense that bears the title "aggravated" carries the same limitation period as the primary crime.

Chapter 18-Search Warrants is amended as follows:

Article 18.02. Grounds for issuance.

The grounds for issuing search warrants have been expanded. A search warrant may now be issued to search for and seize:

1. property acquired by theft or in any other manner which makes its acquisition a penal offense;

2. property specially designed, made, or adapted for or commonly used in the commission of an offense;

3. arms and munitions kept or prepared for the purpose of insurrection or riot;

4. weapons prohibited by the Penal Code;

5. gambling devices or equipment, altered gambling equipment, or gambling paraphernalia;

6. obscene materials kept or prepared for commercial distribution or exhibition, subject to the additional rules set forth by law;

7. drugs kept, prepared, or manufactured in violation of the laws of this state;

8. any property the possession of which is prohibited by law;

9. implements or instruments used in the commission of a crime.

Article 18.18. Forfeiture of gambling devices, prohibited weapons and criminal instruments.

The conforming amendments to the Code of Criminal Procedure provide a more realistic procedure for the forfeiture of gambling devices and equipment, criminal instruments and weapons. Although the forfeiture provisions are somewhat complicated, they generally provide as follows:

1. Following final conviction for possession of gambling device, gambling or altered gambling equipment, gambling paraphernalia, an offense involving a criminal instrument or an offense involving a prohibited weapon, the court shall order the evidence destroyed or forfeited to state, any political subdivision of the state or to any state institution or agency. If gambling proceeds are involved, they may be given to the grand jury for use in investigating alleged violations of the Penal Code or any other agency of the state.

2. If there is no prosecution or conviction, the magistrate must notify the person from whom the items were taken to show cause why the items should not be ordered destroyed or forfeited. The hearing is to be held on the 20th day after the notice was mailed or posted, and failure to appear forfeits a person's right to ask for return of the items. If he appears and contests the destruction or forfeiture, the only way he can get the evidence back is if he shows by a preponderance of the evidence that the items are not gambling devices, equipment or proceeds, criminal instruments or prohibited weapons.

Article 18.19. Disposition of certain weapons.

Weapons seized in connection with an offense involving the use of a deadly weapon or an offense under Chapter 46 of the Penal Code shall be held by the law enforcement agency making the seizure.

However, this article does not apply to prohibited weapons nor to weapons that are alleged to be stolen property.

If the weapon seized was not made pursuant to a search or arrest warrant the person seizing the weapon shall deliver it to a magistrate with a written inventory of the weapon seized.

If there is no prosecution or conviction for an offense involving the weapon seized the magistrate shall notify in writing the person found in possession that he is entitled to the weapon upon request. If the weapon is not requested within sixty (60) days after notice the magistrate may order the weapon destroyed or forfeited to the State for use by the law enforcement agency holding the weapon.

If the person found in possession of the weapon is convicted of an offense involving the use of a deadly weapon or under Penal Code Chapter 46, the court entering judgment may order the weapon destroyed or forfeited to the State for use by the law enforcement agency holding the weapon.

A person convicted under Penal Code Chapter 46 is entitled to the weapon upon request to the law enforcement agency holding the weapon. However, the court in which the defendant was convicted may order the weapon destroyed or forfeited to the State if:

1. the person does not request the weapon within sixty (60) days after his release from jail or the date of conviction if he was not imprisoned; or

2. the person has been previously convicted under Penal Code Chapter 46; or

3. the weapon is one defined as a prohibited weapon under Penal Code Chapter 46.

Major Driving Offenses

This publication does not attempt to deal with minor traffic offenses where original jurisdiction is in the Municipal or Justice of the Peace Courts. It is intended herein to indicate significant changes in the major driving offenses, the grade of County Court misdemeanors or District Court felonies and what offenses have not been changed.

The new penal code does not change the current statutes governing Driving While Intoxicated (Art.802,P.C.1925, becomes Art.6701 1-1, Civil Statutes, and Art. 802b,P.C., 1925 becomes Art. 6701 1-2 Civil Statutes); Driving Under the Influence of Drugs (V.A.C.S., Art.6701d. Sec.50) or Driving While License Suspended (V.A.C.S. Art.6687b, Sec.34).

Article 1150 of the Penal Code covering Failure to Stop and Render Aid has been repealed, however this violation and Failure to Stop and Give Information will continue to be covered under V.A.C.S. Art. 6701d, Sec.38, 39 and 40.

The Fleeing from a Police Officer statute, (V.A.C.S., Art.6701d, Sec. 186) has not been changed by the new Penal Code. The new code provides an evading arrest offense that could possibly be applied in this area which states as follows:

> *"Sec. 38.04. Evading Arrest:* (a) A person commits an offense if he intentionally flees from a person he knows is a peace officer attempting to arrest him. (b) It is an exception to the application of this section that the attempted arrest is unlawful."

The Articles covering Murder by Auto (P.C. Art. 802c); Aggravated Assault by Motor Vehicle (P.C. Art. 1149); and Negligent Homicide, both degrees (P.C. Art. 1230 thru 1243) have been repealed. Conduct previously covered by those statutes is covered by the New Penal Code as follows:

WHERE NO BODILY INJURY IS INVOLVED:

> *"Sec. 22.05. Reckless Conduct:* A person commits an offense if he recklessly engages in conduct that places another in imminent danger of serious bodily injury." (Class B misdemeanor)

WHERE BODILY INJURY SHORT OF DEATH IS INVOLVED:

> *"Sec. 22.01 Assault:* A person commits an offense if he intentionally, knowingly, or recklessly causes bodily injury to another. (Class A misdemeanor)
>
> *"Sec. 22.02. Aggravated Assault:* A person commits an offense if he commits assault as defined in Section 22.01 of this code and he causes bodily injury to another." (Felony of the third degree)

WHERE DEATH IS INVOLVED:

> *"Sec. 19.06. Criminally Negligent Homicide:* A person commits an offense if he causes the death of an individual by criminal negligence." (Class A misdemeanor) It should be stressed here that the test of negligence requires "a gross deviation from the standard of care an ordinary person

would exercise under all the circumstances. . ." as opposed to the requirement or ordinary negligence found under the old code.

"Sec. 19.04. Involuntary Manslaughter: (a) A person commits an offense if he (1) recklessly causes the death of an individual *or* (2) by accident or mistake when operating a motor vehicle while intoxicated and, by reason of such intoxication, causes the death of an individual.

(b) For purposes of this section, "intoxication" means that the actor does not have the normal use of his mental or physical faculties by reason of the voluntary introduction of any substance into his body." (Felony of the third degree) This is an expansion of the Murder by Auto provisions in that it will cover intoxication by any controlled substances. It should be noted that Penal Code Article 802(a)(1) covering acts done while driving under the influence of a narcotic drug has been repealed.

Texas Controlled Substances Act

The Texas Controlled Substances Act is a complete revision of the drug laws in the State of Texas. This Act took effect August 27, 1973. It established new administrative and regulatory provisions, reclassified all drugs as controlled substances, and completely revised the punishments for violations. A substance is either a controlled substance within the meaning of the new law and subject to its penalties and regulations, or it is not.

Definitions:

Among the most important definitions are:

Delivery means the actual or constructive transfer from one person to another of a controlled substance, whether or not there is an agency relationship. This includes offers to sell a controlled substance. Proof of an offer to sell must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree.

Possession is the actual care, custody, control or management of a controlled substance.

Person among other things means any individual, corporation or government or governmental sub-division or agency, business trust, estate trust, partnership or association, or any other legal entity.

Manufacture includes production, preparation, propagation, compounding, conversion, or the processing of a controlled substance, other than marijuana, either directly or indirectly.

Controlled Substances Schedules:

For the purpose of administrative regulations of practitioners and registrants, i.e., doctors, pharmacists, veterinarians, etc., schedules are established. Tests are set forth for determining what controlled substances will be included in which schedule. Except for fraud offenses, the penal provisions of this Act are not connected with those schedules in any way. Subject to certain limitations, the Commissioner of Health of the State Department of Health, with the approval of the State Board of Health, has the power to add substances to, or delete or re-schedule any of the controlled substances enumerated in the five schedules. Controlled substances are placed in one of the five schedules depending upon their relative potential for abuse, whether or not they have accepted medical use and whether or not they may lead to physical or psychological dependence.

Regulations of Controlled Substances:

The Director of the Department of Public Safety is charged with the responsibility of registering those persons who manufacture, distribute and dispense controlled substances in a lawful manner. In addition, the Director has the power to institute proceedings through the District Attorney to revoke a registration. Grounds for revocation and suspension include furnishing false or fraudulent material information in one's applicaton; conviction of a felony offense under either state or federal law; revocation of a practitioner's license for wilfully failing to maintain records required to be kept or willfully or unreasonably refusing to allow inspections authorized by this Act.

The purpose of the Texas Controlled Substances Act is to promote the public health and welfare by the control of illegal drug traffic. Therefore, the operation of any registrant in violation of the regulations of this Act is a public nuisance, and the Director may apply to any court of competent jurisdiction for and may obtain an injunction suspending the registration of the offender.

Criminal Offenses and Penalties:

For the purpose of establishing criminal penalties for acts committed in illegal commerce, there are established four Penalty Groups of controlled substances. Some of the most common substances contained in each penalty group as well as the punishments are listed on page 16.34.

The court has the authority to set aside a judgment or verdict of guilty of any third-degree felony (other than the unlawful manufacture or delivery of controlled substances listed in Penalty Group II) and enter a judgmentof guilty and punish for a Class A misdemeanor if, after considering the circumstances and gravity of the felony committed and the history, character, and rehabilitative needs of the defendant the court finds that such sentence would best serve the ends of justice. In situations where the court is authorized to make this reduction, it may authorize the prosecutor to prosecute initially for the lesser category of offense.

Marijuana, both the possession of and delivery, is punishable under a separate section and is not listed in one of the four penalty groups. Possession of more than four ounces of marijuana is a third-degree felony. Possession of more than 2 ounces, but not more than 4 ounces, is a Class A misdemeanor, and possession of 2 ounces or less is a Class B misdemeanor. The possession of marijuana may not be considered a crime involving moral turpitude.

Possession of controlled substance paraphernalia is a Class A misdemeanor. Controlled substance paraphernalia is defined as a hypodermic syringe, syringe, needle,or other instrument that has on it any quantity (including a trace) of a controlled substance listed in Penalty Group I or II with the intent to use it for administration of the controlled substance by subcutaneous injection in a human being.

Commercial offenses committed under this Act are felonies of the second degree. A commercial offense is committed if a practitioner knowingly or intentionally distributes or dispenses a controlled substance without a prescription; or a registrant knowingly or intentionally manufactures a controlled substance not authorized by his registration to another registrant or another person; or refuses or fails to keep or furnish any records required by this Act; or refuses an entry into premises for an inspection authorized by this Act.

Certain offenses such as obtaining possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge are included in the fraud section of this Act. If the controlled substance is classified in Schedules I or II, it is a second-degree felony; if the controlled substance is classified in Schedule III, it is a third-degree felony; and if the substance is classified in Schedule IV it is a Class B misdemeanor.

A conditional discharge for first offenders is provided for under this Act. If any person has not previously been convicted of an offense under this Act, or, subsequent to the effective date of this Act under any statute relating to a substnace that is defined by this Act as a controlled substance, the court may place the defendant on probation on such reasonable conditions as it may require for a period not to exceed two years. If during this probationary period the accused violates a condition of his probation the court may find him guilty and punish him accordingly. If during the period of his probation the defendant does not violate any of the conditions imposed upon him then the court shall discharge him and dismiss the proceedings against him. A discharge or dismissal shall not be considered as a conviction for the purpose of the enhancement of punishment for repeat or habitual offenders. Any other procedure provided by law relating to probation may be followed by the court instead of this one.

For persons previously convicted of an offense involving marijuana, an elaborate re-sentencing provisions is contained in this Act. However, on October 10, 1973, this was declared unconstitutional by the Texas Court of Criminal Appeals.

Enforcement and Administrative Provisions:

There are many provisions that aid the Director of the Department of Public Safety in carrying out his duties under this Act. It gives the Director, or a DPS employed designated by him, the authority to enter premises to inspect records and documents required to be kept or stored. This includes any place where a person registered may lawfully hold, manufacture, distribute, dispense, administer, possess, or otherwise

dispose of a controlled substance. Such officer or employee entering such premises has the right to inspect at reasonable times upon stating his purpose and presenting the owner or person in charge his credentials and written notice of his authority to inspect. The inspecting officers have the right to copy records and other documents required to be kept or made under this Act. The Director may arrange for the exchange of information among law enforcement agencies, establish a centralized unit to accept, catalog, file, and collect statistics from all contributing law enforcement agencies and make that information available to federal, state and local law enforcement agencies. This includes records on certain drug dependent persons and other controlled substance law offenders in the State of Texas.

Certain property may be forfeited under this Act. This property includes controlled substances manufactured, distributed, dispensed, delivered, obtained, or possessed in violation of the Act; all raw materials and equipment of any kind that are used to manufacture or process or deliver controlled substances in violation of this Act; all property that is used or intended for use as a container for either of the above; any books or records kept in relation to a commission or intended commission of an offense under this Act; and any conveyance used or intended for use to transport for delivery or in any manner facilitate the transportation for delivery of any controlled substances, packaging materials, etc. However, no conveyance can be forfeited if the delivery involved is only an offer to sell.

No property can be forfeited if one of the above criminal acts was committed without the owner's knowledge or without his consent. Also, a forfeiture encumbered by a bona fide security interest is subject to the interest of the secured party so long as he did not participate or have knowledge of the criminal act.

Property subject to forfeiture may be seized by any peace officer under authority of a search warrant issued pursuant to this Act. Seizure may be made without a warrant if:

(1) the owner, operator, or agent in charge of the property consents;

(2) the seizure is incident to a search to which the owner, operator or agent in charge of the property consents;

(3) the property subjected to seizure has been the subject of a prior judgment in favor of the State in a criminal injunction or forfeiture proceeding based upon this Act; or

(4) the seizure was incident to a lawful arrest, lawful search, or lawful search incident to arrest.

Miscellaneous Provisions:

This Act applies only to offenses committed on or after August 27, 1973. Prosecution for an offense committed before the effective date of of this Act is governed by the law existing at the time the offense was committed and that law is continued in effect for this purpose.

Conduct made a criminal offense under the laws prior to the effective date of this Act may not be prosecuted after August 27, 1973. However, a final conviction existing on the effective date of this Act, for conduct constituting an offense under the prior law is valid and unaffected by this Act.

OFFENSES AND PENALTIES UNDER THE TEXAS CONTROLLED SUBSTANCES ACT OF 1973

An Offense with Respect to:	Manufacture, delivery, sale or possession with intent to deliver, sell, etc.	Possession
Penalty Group I: Includes heroin, opium, codeine, LSD, morphine, methoadone, pethidine (demerol), methamphetamine (speed).	first-degree felony	second-degree felony
Penalty Group II: Includes mescaline, psilocybin, psilocyn, hashish and other hallucinogens including "STP" and "MDA"	third-degree felony	third-degree felony
Penalty Group III: Includes amphetamines such as Ritalin, preludin, dexedrine, dexamyl, benzedrine such as nembutal (yellow jackets), seconal (red birds), and tuinal (Christmas trees); methaqualone (a hypnotic drug-trade name "Qualude"); lysergic acid and lysergic acid amide (precursor's to LSD, contained in Hawaiian Baby Wood Rose seed); phencyclidine (a hallucinogen developed as an animal tranquilizer, known as "peace pill"); paregoric; raw peyote (but mescaline extracted in Group II); chloral hydrate ("Mickey Finn" knockout drops); phenobarbital.	third-degree felony	Class A misdemeanor
Penalty Group IV: Common codeine cough syrup, such as "Robitussin A/C" and terpin hydrate with codeine, not more than 1 grain of codeine per ounce.	Class A misdemeanor	Class B misdemeanor
Marijuana:	Third-degree felony (Exception: if 1/4 oz. or less is delivered without renumeration Class B misdemeanor).	Over 4 oz.-third-degree felony; 2-4 oz. Class A misdemeanor; not more than 2 oz. Class B misdemeanor

Statutes of Limitation
(Chapter 12, Code of Criminal Procedure)

ATTEMPT, CONSPIRACY, SOLICITATION and AGGRAVATED offenses have the same limitation as the primary offense (Art. 12.03,C.C.P.)

In FELONY cases, except as stated below, the indictment must be presented within three (3) years from the time of commission of the offense (Art. 12.01,C.C.P.)

Arson	5 years
Burglary	5 years
Forgery or Passing	10 years
Manslaughter	No Limitation
Murder	No Limitation
Robbery	5 years
Sex Offense (Chap. 21,P.C.)	1 year
Theft	5 years
Theft by executor, administrator, etc.	10 years
Theft of public property by public servant	10 years

In MISDEMEANOR cases, the information or indictment must be presented within two (2) years from the time of commission of the offense (Art. 12.02,C.C.P.)

COMPUTATION-The follwing are not included in the computation of time:

(1) The day the offense was committed (Art. 12.04,C.C.P.).

(2) The day the information or indictment is presented (Art. 12.04,C.C.P.).

(3) The time the accused is absent from the state (Art. 12.05,C.C.P.).

(4) The time during the pendency of an invalid indictment, information, or complaint (Art. 12.05,C.C.P.).

General Penalties

Offense	Punishment
Felonies	
Capital Felony	Life or death
First-degree felony	Life or 5 to 99 years
Second-degree felony	2 to 20 years and optional fine not to exceed $10,000
Third-degree felony	2 to 10 years and optional fine not to exceed $5,000
Misdemeanors	
Class A misdemeanor	Fine not to exceed $2,000 and/or one year or less
Class B misdemeanor	Fine not to exceed $1,000 and/or 180 days or less
Class C misdemeanor	Fine not to exceed $200

Punishments for Attempts (Sec. 15.01)

If Offense Attempted is:	Punishment:
Capital Felony	First-degree Felony
First-degree Felony	Second-degree Felony
Second-degree Felony	Third-degree Felony
Third-degree Felony	Class A Misdemeanor
Class A Misdemeanor	Class B Misdemeanor
Class B Misdemeanor	Class C Misdemeanor

Punishments for Conspiracy (Sec. 15.02)

If Crime Conspired to Commit is:	Punishment:
Capital Felony	First-degree Felony
First-degree Felony	Second-degree Felony
Second-degree Felony	Third-degree Felony
Third-degree Felony	Class A Misdemeanor

Criminal Solicitation (Sec. 15.03)

If Offense Solicited is:	Punishment:
Capital Felony	First-degree Felony
First-degree Felony	Second-degree Felony

INDEX OF TEXAS PENAL CODE OFFENSES

CLASSIFICATION ABBREVIATIONS

Title 3, Family Code

DC - Designates an offense for which a child can be found to have engaged in delinquent conduct (one violation). Section 51.03(a), Texas Family Code.

NS - Designates an offense for which a child can be found to have engaged in conduct indicating a need for supervision (three violations of such laws are necessary). Section 51.03(b), Texas Family Code.

Penal Code

F-1 Felony of first degree

F-2 Felony of second degree

F-3 Felony of third degree

M-A Misdemeanor, class A

M-B Misdemeanor, class B

M-C Misdemeanor, class C

Section	*Offense*	*Family Code*	*Penal Code*
	OFFENSES AGAINST THE PERSON		
19.02	Murder	DC	F-1
19.03	Voluntary Manslaughter	DC	F-2
19.04	Involuntary Manslaughter	DC	F-3
19.06	Criminally Negligent Homicide	DC	M-A
20.02	False Imprisonment -general	DC	M-B
	-victim recklessly exposed to substantial risk of serious bodily injury	DC	F-3
20.03	Kidnapping	DC	F-3
20.04	Aggravated Kidnapping -general	DC	F-1
	-victim released voluntarily, alive and in safe place	DC	F-2
21.02	Rape	DC	F-2
21.03	Aggravated Rape	DC	F-1
21.04	Sexual Abuse	DC	F-2
21.05	Aggravated Sexual Abuse	DC	F-1
21.06	Homosexual Conduct	NS	M-C
21.07	Public Lewdness	DC	M-A
21.08	Indecent Exposure	NS	M-C
21.09	Rape of a Child	DC	F-2
21.10	Sexual Abuse of a Child	DC	F-2
21.11	Indecency with a Child	DC	F-3

Section	*Offense*	*Family Code*	*Penal Code*
22.01	Assault		
	-causes bodily injury to another	DC	M-A
	-threats of imminent bodily injury	NS	M-C
	-causes offensive or provocative physical contact with another	NS	M-C
22.02	Aggravated Assault	DC	F-3
22.03	Deadly Assault on a Peace Officer	DC	F-1
22.04	Injury to a Child	DC	F-2
22.05	Reckless Conduct	DC	M-B
22.07	Terroristic Threat		
	-general	DC	M-B
	-preventing or interrupting occupation or use of building; place of assembly; place of public access; place of employment or occupation; aircraft, automobile, other form of conveyance; other public place	DC	M-A
22.08	Aiding Suicide		
	-general	NS	M-C
	-actions cause suicide or attempts resulting in serious bodily injury	DC	F-3
	OFFENSES AGAINST THE FAMILY		
25.01	Bigamy	DC	F-3
25.02	Incest	DC	F-3
25.03	Interference with Child Custody	DC	F-3
25.04	Enticing a Child	DC	M-B
25.05	Criminal Nonsupport		
	-general	DC	M-A
	-one or more prior convictions of same offense	DC	F-3
	-committed while offender resides in another state	DC	F-3

Section	*Offense*	*Family Code*	*Penal Code*
	OFFENSES AGAINST PROPERTY		
28.02	Arson		
	-general	DC	F-2
	-if bodily injury, less than death, occurs	DC	F-1
28.03	Criminal Mischief		
	-property damage less than $5	NS	M-C
	-substantial inconvenience caused	NS	M-C
	-property damage $5 or more-less than $20	DC	M-B
	-property damage $20 or more-less than $200	DC	M-A
	-property damage $200 or more-less than $10,000	DC	F-3
	-causes impairment or interruption of public communications, public transportation, public water, gas or power supply, or other public service	DC	F-3
	-pecuniary loss involves cattle, horses, sheep, swine, or goats	DC	F-3
	-pecuniary loss involves fence used in production of above livestock	DC	F-3
	-damage or destruction inflicted by branding above livestock	DC	F-3
	-property damage $10,000 or more	DC	F-2
28.04	Reckless Damage or Destruction	NS	M-C
29.02	Robbery	DC	F-2
29.03	Aggravated Robbery	DC	F-1
30.02	Burglary		
	-general	DC	F-2
	-if premises are habitat	DC	F-1
	-if offender is armed with explosives or deadly weapon	DC	F-1
	-injury or attempt to injure anyone	DC	F-1
30.03	Burglary of Coin-Operated Machines	DC	M-A

Section	*Offense*	*Family Code*	*Penal Code*
30.04	Burglary of Vehicles	DC	F-3
30.05	Criminal Trespass		
	-general	NS	M-C
	-committed in habitation	DC	M-A
31.03	Theft		
	-value less than $5	NS	M-C
	-value $5 or more-less than $20	DC	M-B
	-value less than $5-defendant has prior theft conviction	DC	M-B
	-value $20 or more-less than $200	DC	M-A
	-value $200 or more-less than $10,000	DC	F-3
	-cattle, horses, sheep, swine, goats, value under $10,000	DC	F-3
	-from person of another	DC	F-3
	-from human corpse or grave	DC	F-3
	-value less than $200-defendant has 2 or more prior theft convictions	DC	F-3
	-value $10,000 or more	DC	F-2
	-by threat to commit, in future, a felony against person or property	DC	F-2
31.04	Theft of Service		
	-value less than $5	NS	M-C
	-value $5 or more-less than $20	DC	M-B
	-value $20 or more-less than $200	DC	M-A
	-value $200 or more-less than $10,000	DC	F-3
	-value $10,000 or more	DC	F-2
31.05	Theft of Trade Secrets	DC	F-3
31.07	Unauthorized Use of a Vehicle (includes boat, airplane, or motor-propelled vehicle)	DC	F-3
32.21	Forgery		
	-general	DC	M-A
	-will, codicil, deed, deed of trust, mortgage, security instrument, security agreement, credit card, check or similar sight order for payment of money, contract, release, or other commercial instrument	DC	F-3

Section	*Offense*	*Family Code*	*Penal Code*
32.21	Forgery (continued) -if writing is or purports to be part of issue of money, securities, postage or revenue stamps, or other instruments issued by state or national governments, or subdivisions, or part of issue of stock, bonds, or other instruments representing interests in or claims against another person	DC	F-2
32.22	Criminal Simulation	DC	M-A
32.31	Credit Card Abuse	DC	F-3
32.32	False Statement to Obtain Property or Credit	DC	M-A
32.33	Hindering Secured Creditors -general	DC	M-A
	-if defendant removes encumbered property from state without secured party's consent	DC	F-3
32.34	Fraud in Insolvency	DC	M-A
32.35	Receiving Deposit, Premium, or Investment in Failing Financial Institution	DC	M-A
32.41	Issuance of Bad Check	NS	M-C
32.42	Deceptive Business Practices*	DC	M-A
32.43	Commercial Bribery	DC	F-3
32.44	Rigging Publicly Exhibited Contest -general	DC	M-A
	-if defendant's conduct in connection with betting or wagering	DC	F-3

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*Sec. 32.42, Subsection (c) provides that the penalty for certain deceptive business practices shall be reduced to a Class C Misdemeanor if the actor commits the offense with criminal negligence and without a prior conviction rather than intentionally, knowingly, recklessly or with a prior conviction.

Section	*Offense*	*Family Code*	*Penal Code*
32.45	Misapplication of Fiduciary Property of Financial Institution		
	-value less than $200	DC	M-A
	-value $200 or more-less than $10,000	DC	F-3
	-value $10,000 or more	DC	F-2
32.46	Securing Execution of Document by Deception	DC	F-3
32.47	Fraudulent Destruction, Removal, or Concealment of Writing		
	-general	DC	M-A
	-will or codicil of another, deed, mortgage, deed of trust, security instrument, security agreement, or other writing for which law provides public recording or filing	DC	F-3
32.48	Endless Chain Scheme	DC	M-B
	OFFENSES AGAINST PUBLIC ADMINISTRATION		
36.02	Bribery	DC	F-2
36.03	Coercion of Public Servant or Voter		
	-general	DC	M-A
	-if coercion is threat to commit felony	DC	F-3
36.04	Improper Influence	DC	M-A
36.05	Tampering with Witness	DC	F-3
36.06	Retaliation	DC	F-3
36.07	Compensation for Past Official Behavior	DC	M-A

Section	*Offense*	*Family Code*	*Penal Code*
36.08	Gift to Public Servant by Person Subject to His Jurisdiction	DC	M-A
36.09	Offering Gift to Public Servant	DC	M-A
37.02	Perjury	DC	M-A
37.03	Aggravated Perjury	DC	F-3
37.08	False Report to Peace Officer	DC	M-B
37.09	Tampering with or Fabricating Physical Evidence	DC	M-A
37.10	Tampering with Governmental Record		
	-general	DC	M-A
	-with intent to defraud or harm another	DC	F-3
37.11	Impersonating Public Servant		
	-general	DC	M-A
	-impersonating peace officer	DC	F-3
38.02	Failure to Identify as Witness	NS	M-C
38.03	Resisting Arrest or Search		
	-general	DC	M-A
	-with use of deadly weapon	DC	F-3
38.04	Evading Arrest	DC	M-B
38.05	Hindering Apprehension or Prosecution	DC	M-A
38.06	Compounding	DC	M-A
38.07	Escape		
	-person arrested, charged with, or convicted of misdemeanor	DC	M-A
	-person arrested, charged with, or convicted of felony	DC	F-3
	-person confined in penal institution	DC	F-3
	-if person uses or threatens use of deadly weapon	DC	F-2

Section	*Offense*	*Family Code*	*Penal Code*
38.08	Permitting or Facilitating Escape		
	-general	DC	M-A
	-if escapee was under arrest for, charged with, or convicted of felony	DC	F-3
	-if escapee was confined to penal institution	DC	F-3
	-if escapee used or threatened use of deadly weapon	DC	F-3
	-if official or employee intentionally permitted escape	DC	F-3
38.10	Implements for Escape		
	-introduction into penal institution of anything useful for escape	DC	F-3
	-if deadly weapon	DC	F-2
38.11	Bail Jumping and Failure to Appear		
	-general	DC	M-A
	-if primary offense punishable by fine only	NS	M-C
	-if primary offense with felony	DC	F-3
38.12	Barratry	DC	M-A
38.13	Hindering Proceedings by Disorderly Conduct	DC	M-A
39.01	Official Misconduct		
	-public servant commits unauthorized act or act in excess of authority; refrains from performing official duty; violates law relating to office or employment	DC	M-A
	-public servant takes, misapplies, etc., property in custody or possession by virtue of employment	DC	F-3
39.02	Official Oppression	DC	M-A
39.03	Misues of Official Information	DC	M-A

Section	*Offense*	*Family Code*	*Penal Code*
	OFFENSES AGAINST PUBLIC ORDER AND DECENCY		
42.01	Disorderly Conduct		
	-general	NS	M-C
	-discharge of firearm in public place	DC	M-B
	-display of firearm or other deadly weapon in public place in manner calculated to alarm	DC	M-B
42.02	Riot*		
42.03	Obstructing Highway or Other Passageway	DC	M-B
42.05	Disrupting Meeting or Procession	DC	M-B
42.06	False Alarm or Report	DC	M-A
42.07	Harassment	DC	M-B
42.08	Public Intoxication	NS	M-C
42.09	Desecration of Venerated Object	DC	M-A
42.10	Abuse of Corpse	DC	M-A
42.11	Cruelty to Animals	DC	M-A
42.12	Shooting on Public Road	NS	M-C
43.02	Prostitution		
	-general	DC	M-C
	-second or subsequent conviction	DC	M-B

* Sec. 42.02, Subsection (f) provides: An offense under this section is an offense of the same classification as any offense of a higher grade committed by anyone engaged in the riot if the offense was:
(1) in the furtherance of the purpose of the assembly; or
(2) an offense which should have been anticipated as a result of the assembly.

Section	*Offense*	*Family Code*	*Penal Code*
43.03	Promotion of Prostitution	DC	M-A
43.04	Aggravated Promotion of Prostitution	DC	F-3
43.05	Compelling Prostitution	DC	F-2
43.22	Obscene Display or Distribution	NS	M-C
43.23	Commercial Obscenity		
	-general	DC	M-B
	-if person under age 17 is hired, employed or otherwise used	DC	M-A
43.24	Sale, Distribution, or Display of Harmful Material to Minor		
	-general	DC	M-A
	-if minor is hired, employed or used	DC	F-3
46.02	Unlawful Carrying Weapons		
	-general	DC	M-A
	-on premises of licensee or permittee for sale or service of alcoholic beverages	DC	F-3
46.04	Places Weapons Prohibited	DC	M-A
46.05	Unlawful Possession of Firearm by Felon	DC	F-3
46.06	Prohibited Weapons		
	-general	DC	F-2
	-switchblade knife or knuckles	DC	F-3
46.07	Unlawful Transfer of Firearm	DC	M-A
47.02	Gambling	NS	M-C
47.03	Gambling Promotion	DC	F-3
47.04	Keeping A Gambling Place	DC	F-3
47.05	Communicating Gambling Information	DC	F-3

Section	*Offense*	*Family Code*	*Penal Code*
47.06	Possession of Gambling Device or Equipment	DC	F-3
47.07	Possession of Gambling Paraphernalia	DC	M-A

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