



SPECIAL COMMITMENT FINDINGS
Overview and Implementation Recommendations
Legislation Effective September 1, 2017
SB 1630, 84th R.S., 2015

Overview. During the 84th Legislative Session, Senate Bill 1630 by Whitmire made several important amendments to the Family Code relating to the procedural aspects of indeterminate commitments to the Texas Juvenile Justice Department (TJJD). These Implementation Recommendations as well as suggested language for special commitment findings are provided as an educational service to assist local juvenile probation departments, prosecutors and judges in establishing local policies and practices. A copy of SB 1630 has been provided in its entirety along with an excerpt of the 2017 Special Legislative Issue commentary. All sample pleadings should be reviewed by local counsel or the juvenile court prosecutor for legal sufficiency and adapted for your county's particular circumstances or drafting preferences.

Background. SB 1630 was part of a 2015 reform initiative based on research which suggests that better rehabilitative outcomes are realized when services are available to adjudicated juveniles who are placed in regions closer to home. In particular, the legislation prohibits indeterminate commitments to TJJD state custody unless the local juvenile court makes special commitment findings and assesses the risks and needs of the child in accordance with Section 54.04013 of the Family Code. TJJD was also mandated to work with the counties to develop a regionalization plan aimed at reducing the number of youth committed to state institutions and to augment the infrastructure of secure post-adjudication facilities. [Sec. 203.017, Human Resources Code. (S.B. 1630, 84th R.S.)].

Statutory Language. As amended in 2015, Section 54.04(d)(2) and Section 54.04013 of the Texas Family Code were enacted with a delayed effective date of September 1, 2017 and apply to offenses that occur on or after the effective date. The relevant statutes provide:

Family Code Sec. 54.04 (d)(2). DISPOSITION HEARING. ...if the court or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct that violates a penal law of this state or the United States of the grade of felony, ***the court or jury made a special commitment finding under Section 54.04013, and the petition was not approved by the grand jury under Section 53.045, the court may commit the child to the Texas Juvenile Justice Department under Section 54.04013, or a post-adjudication secure correctional facility under Section 54.04011(c)(1), as applicable, without a determinate sentence;***

Family Code Sec. 54.04013. SPECIAL COMMITMENT TO TEXAS JUVENILE JUSTICE DEPARTMENT. Notwithstanding any other provision of this code, after a disposition hearing held in accordance with Section 54.04, the juvenile court may commit a child who is found to have engaged in delinquent conduct that constitutes a felony offense to the Texas Juvenile Justice Department ***without a determinate sentence if the court makes a special commitment finding that the child has behavioral health or other special needs that***

cannot be met with the resources available in the community. The court should consider the findings of a validated risk and needs assessment and the findings of any other appropriate professional assessment available to the court.

Special Commitment Findings. Section 54.04013, Family Code requires the juvenile court to enter a special commitment finding that asserts that “the child has behavioral health or other special needs that cannot be met with the resources available in the community.” In addition, the court should, but is not required to, consider other factors revealed in a validated risk and needs assessment and any available professional assessments. The language mandated in the statute is a type of affirmative finding made by a judge that supports the court’s conclusion that the youth should be committed to TJJ state custody. The finding of the juvenile court must be based on evidence that is factually and legally sufficient to support the dispositional order. In making its dispositional decision, the court may consider, among other things, testimony, reports or other documents prepared by juvenile probation personnel or other court consultants. Specifically, it is recommended that the general information presented before the court should also include, if relevant, the juvenile’s prior felony referrals and adjudications, offense severity, prior interventions and other supporting documents. Additionally, evidence must be provided to the court regarding whether probation services, programs, and facilities are unavailable in the region to meet the individualized needs of the adjudicated juvenile. A commitment to TJJ is prohibited unless the court order contains the special commitment finding.

Statement of Reasons. Procedurally, each court will need to determine how the relevant factors that formed the basis of the court’s findings are placed on the record and/or reflected in the court order. The plain meaning of the Section 54.4013, also suggests a restatement of the statutory language for purposes of the court order.

Court Order Language. The court must include the special commitment findings under Section 54.04013 in addition to any home removal or other dispositional findings that are required by law.

Sample* Court Order Language

It further appears to the Court that the best interest of the child and the best interest of the public will be served by commitment to the care, custody and control of the Texas Juvenile Justice Department. The Court having heard and considered evidence and argument of counsel on the issue of commitment, makes the following special findings in accordance with Section 54.04013, Family Code for commitment to the Texas Juvenile Justice Department without a determinate sentence:

1. *The child has behavioral health or other special needs that cannot be met with the resources available within the community, to wit:*

2. *The court has, at its discretion, considered the findings of a validated risk and needs assessment and the findings of an appropriate professional assessment.*

**[This language is intended as a SAMPLE ONLY. Prior to use, this language should be reviewed by local counsel or the juvenile court prosecutor for legal sufficiency and drafting preferences.]*

Risk and Needs Assessment. In determining whether TJJD commitment is an appropriate disposition, the court may consider other factors revealed through the use of a validated risk assessment tool or other professional assessment. Specifically, Section 54.04013 provides “the court should consider the findings of a validated risk and needs assessment and the findings of any other appropriate professional assessment available to the court.” The language of the statute states the court “should” consider the results of a validated risk assessment instrument in making its special commitment findings. Given the implications of the discretionary language, some juvenile courts, however, have elected to require that a validated assessment instrument be utilized by the juvenile probation department. The *Texas Juvenile Justice Regionalization Plan* (August 2015) identified the need for statewide uniformity in the use of a validated risk and needs assessment in order to match youth treatment needs. Although not yet available statewide, the use of a single assessment tool would facilitate the collection of data to evaluate rehabilitative programs, services and outcomes. During the 2017 Legislative Session, TJJD did not receive specific appropriations to fund and mandate the use of an assessment instrument. To that end, each of the seven (7) TJJD regions (Panhandle, West, North, Northeast, Central, Southeast, and South) will need to coordinate and leverage any available grant resources or enhancement funds to purchase a validated instrument or software. Currently, 106 of the 166 juvenile probation departments utilize a validated risk assessment tool, or are in the process of acquiring a validated risk and needs assessment tool. Additional information can be obtained through regionalization representatives or the office of TJJD Probation and Community Services.

Documents Required for Admission to TJJD. The legal requirements for admission to the Texas Juvenile Justice Department have not changed. Human Resources Code, Sections 243.004 [Notification and Duty to Furnish Information] and Section 243.005 [Information Provided by Committing Court] as well as agency administrative standards in Section 380.8502, Texas Administrative Code [Legal Requirements for Admission] outline the required documentation that must be submitted by the juvenile court to TJJD for each adjudicated juvenile committed to the state. As is their current practice, TJJD intake and reception staff will screen commitment orders for the required documentation and findings.

Regional Diversion. Prior to full implementation of SB 1630, TJJD launched a process by which juvenile probation departments applied for diversion funding to place youth that would otherwise be eligible for TJJD commitment. This process will continue in support of the requirements of the bill. During the planning phase, juvenile probation departments were also asked to complete an inventory of probation services, programs, mental health and other community resources. This regional resource information is available from TJJD. For more information on regional diversions, contact Lou Serrano, Sr. Director of Probation and Community Services at Tel. 512.490.7130.

Where can I get additional information?

If you have any additional questions of a general nature, please contact the Texas Juvenile Justice Department’s Legal Help Desk at (512) 490-7721 or legalhelp@tjjd.texas.gov. Should you have questions specific to a particular case and/or the development of pleadings to implement these requirements, please work closely with your local counsel. This memorandum will soon be available for download on the Department’s website at www.tjjd.texas.gov.



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Advanced Excerpt

Special Commitment Findings Update Statutory Compliance and Senate Bill 1630 (84th R.S.)

Family Code Sec. 54.04. DISPOSITION HEARING. (d) If the court or jury makes the finding specified in Subsection (c) allowing the court to make a disposition in the case:

(1) the court or jury may, in addition to any order required or authorized under Section 54.041 or 54.042, place the child on probation on such reasonable and lawful terms as the court may determine:

(A) in the child's own home or in the custody of a relative or other fit person; or

(B) subject to the finding under Subsection (c) on the placement of the child outside the child's home, in:

(i) a suitable foster home;
(ii) a suitable public or private residential treatment facility licensed by a state governmental entity or exempted from licensure by state law, except a facility operated by the Texas Juvenile Justice Department; or

(iii) a suitable public or private post-adjudication secure correctional facility that meets the requirements of Section 51.125, except a facility operated by the Texas Juvenile Justice Department;

(2) if the court or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct that violates a penal law of this state or the United States of the grade of felony, the court or jury made a special commitment finding under Section 54.04013, and [if] the petition

was not approved by the grand jury under Section 53.045, the court may commit the child to the Texas Juvenile Justice Department under Section 54.04013, or a post-adjudication secure correctional facility under Section 54.04011(c)(1), as applicable, without a determinate sentence;

(3) if the court or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct that included a violation of a penal law listed in Section 53.045(a) and if the petition was approved by the grand jury under Section 53.045, the court or jury may sentence the child to commitment in the Texas Juvenile Justice Department or a post-adjudication secure correctional facility under Section 54.04011(c)(2) with a possible transfer to the Texas Department of Criminal Justice for a term of:

(A) not more than 40 years if the conduct constitutes:

(i) a capital felony;

(ii) a felony of the first degree; or

(iii) an aggravated controlled substance felony;

(B) not more than 20 years if the conduct constitutes a felony of the second degree; or

(C) not more than 10 years if the conduct constitutes a felony of the third degree;

(4) the court may assign the child an appropriate sanction level and sanctions as provided by the assignment guidelines in Section 59.003;

(5) the court may place the child in a suitable nonsecure correctional facility that is registered and meets the applicable standards for the facility as provided by Section 51.126; or

(6) if applicable, the court or jury may make a disposition under Subsection (m) or Section 54.04011(c)(2)(A).

Commentary by Kaci Singer

Source: SB 1630

Effective Date: September 1, 2017

Applicability: Applies to conduct that occurs on or after September 1, 2017.

Summary of Changes: In 2015, the law changed to require a special commitment finding in order to commit a child with an indeterminate sentence to TJJD. This change in law applies to an offense committed on or after September 1, 2017.

Family Code Sec. 54.04013. SPECIAL COMMITMENT TO TEXAS JUVENILE JUSTICE DEPARTMENT. Notwithstanding any other provision of this code, after a disposition hearing held in accordance with Section 54.04, the juvenile court may commit a child who is found to have engaged in delinquent conduct that constitutes a felony offense to the Texas Juvenile Justice Department without a determinate sentence if the court makes a special commitment finding that the child has behavioral health or other special needs that cannot be met with the resources available in the community. The court should consider the findings of a validated risk and needs assessment and the findings of any other appropriate professional assessment available to the court.

Commentary by Kaci Singer

Source: SB 1630

Effective Date: September 1, 2015

Applicability: Applies to conduct that occurs on or after September 1, 2017.

Summary of Changes: In 2015, the legislature created this new provision, requiring a special commitment finding in order to commit a child to TJJD with an indeterminate sentence. Though adopted

and effective September 1, 2015, this law did not apply then. It applies to offenses committed on or after September 1, 2017. Once applicable, in order for a court to commit a juvenile with an indeterminate sentence, the juvenile must have committed a felony and the court must make a “special commitment finding,” which is essentially an affirmative finding that the child has behavioral health or other special needs that cannot be met with the resources available in the community. In making its determination, the court should, but is not required to, consider the findings of a validated risk and needs assessment and any other professional assessments available to the court. The “special commitment finding” is not required to be made for a determinate sentence commitment. It bears noting that this provision only requires the “special commitment finding” to be made in a disposition hearing under Section 54.04, Family Code; it was not extended to a modification hearing under Section 54.05, Family Code. This is possibly a drafting oversight. To avoid any potential error, courts may wish to make this finding for every indeterminate commitment, whether it is a direct commitment or a commitment as a result of a modification hearing.