Objective
To provide an overview of juvenile law and procedure for juvenile probation officers.

Introduction

Historical Perspective

14th Century
• The concept that juveniles are less culpable than adults appeared in ____________ law.

17th Century
• The legal doctrine, of parens patriae established the "parental" role of the ___________ concerning welfare of children.

1800s
• Created in the U.S. during period of progressive policy reform regarding youthful offenders.

1907
• Under the Juvenile Court Act, Texas established a separate ______________ for children under age 16.

1960s to Present
• The Supreme Court handed down several landmark cases that guaranteed constitutional ______________ to juvenile offenders, but kept separate system.
**In re Gault**

- **FACTS:**
  - 15 year-old Arizona youth accused of making lewd phone calls was taken into custody by police without notice to his ____________. After juvenile proceedings, Gault was committed to the State School until age 21.

- **HELD:**
  - U.S. Supreme Court held that a juvenile delinquency adjudication must comply with ______________ requirements including notice to parents, right to hearing and privilege of self-incrimination just as in adult proceedings.

---

**Supreme Court Timeline**

- **Kent v. United States (1966)**
  - Courts must provide the “essentials of due process” in transferring juveniles to the adult system.

- **In re Gault (1967)**
  - In hearings that could result in commitment to an institution, juveniles have four basic constitutional rights.

- **McKeiver v. Pennsylvania (1971)**
  - Jury trials are not constitutionally required in juvenile court hearings.

- **Breed v. Jones (1975)**
  - Waiver of a juvenile to criminal court following adjudication in juvenile court constitutes double jeopardy.

- **Oklahoma Publishing Co. v. District Court (1977)**
  - The press may report juvenile court proceedings under certain circumstances.

- **Smith v. Daily Mail Publishing Co. (1979)**
  - Defendant’s youthful age should be considered a mitigating factor in deciding whether to apply the death penalty.

- **Eddings v. Oklahoma (1982)**

- **Schall v. Martin (1984)**
  - Preventive pretrial detention of juveniles is allowable under certain circumstances.

- **Thompson v. Oklahoma (1988)**

- **Roper v. Simmons, 543 U.S. 551 (2005).**

---

**Introduction**
OVERVIEW OF TEXAS COURTS

Texas Court System

[Diagram showing Texas Supreme Court, Texas Court of Criminal Appeals, 14 Courts of Appeal, Trial Court]

http://www.courts.state.tx.us/ Court Structure Diagram

Trial Courts: CCP Ch. 4

Courts & Juvenile Jurisdiction

- District Court
- County Court
- County Court at Law
- Municipal Court
- Justice of the Peace
14 Texas Courts of Appeal: GC 22.201

<table>
<thead>
<tr>
<th>1st Court of Appeals, Houston</th>
<th>2nd Court of Appeals, Ft Worth</th>
<th>3rd Court of Appeals, Austin</th>
<th>4th Court of Appeals, San Antonio</th>
</tr>
</thead>
<tbody>
<tr>
<td>5th Court of Appeals, Dallas</td>
<td>6th Court of Appeals, Texarkana</td>
<td>7th Court of Appeals, Amarillo</td>
<td>8th Court of Appeals, El Paso</td>
</tr>
<tr>
<td>9th Court of Appeals, Beaumont</td>
<td>10th Court of Appeals, Waco</td>
<td>11th Court of Appeals, Eastland</td>
<td>12th Court of Appeals, Tyler</td>
</tr>
<tr>
<td>13th Court of Appeals, Corpus Christi</td>
<td>14th Court of Appeals, Houston</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Dual Appellate System**

- Final authority in all _______ and _______ delinquency cases in the state.
- Most of the cases decided by the Supreme Court come as _______ from decisions of one of the 14 Courts of Appeals.

**Texas Supreme Court**

- The HIGHEST state court for appeals resulting from _______ cases.
- Hears JUVENILE certification issues raised on appeal.

**Court of Criminal Appeals**

**Introduction**
Texas Juvenile Law

SOURCES OF LAW

Primary Sources of Law

<table>
<thead>
<tr>
<th>State Statutes</th>
<th>Federal Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Texas Family Code - Primary Source</td>
<td>• Juvenile Justice &amp; Delinquency Prevention Act</td>
</tr>
<tr>
<td>• Texas Penal Code</td>
<td></td>
</tr>
<tr>
<td>• Texas Code of Criminal Procedure</td>
<td></td>
</tr>
<tr>
<td>• Texas Rules of Civil Procedure</td>
<td></td>
</tr>
<tr>
<td>• Texas Education Code</td>
<td></td>
</tr>
<tr>
<td>• Texas Rules of Evidence</td>
<td></td>
</tr>
</tbody>
</table>
Case Law & Opinions

- ____________________ – Law established by judicial decisions.
- ____________________ – A case decision that affects how similar disputes will be resolved.
- ____________________ - The formal statement of the reasoning and the principles of law used in reaching a decision of a case. Also refers to persuasive opinions of the Attorney General.

Enabling Laws & Administrative Rules

Enabling Legislation

- Texas Human Resources Code – TJPC and Juvenile Justice System
- Chapters 141 & 142

Administrative Rules aka “Standards”

- Texas Administrative Code
- TJPC--Title 37
  Chapters 341 - 358
  Proposed Changes Scheduled – January 2010
- TYC--Title 37
- Chapters 85-119

Philosophical Comparison

- The objective of Adult Criminal System is to ensure public safety by imposing penalties to the crime; to deter criminal behavior through correctional and rehabilitative measures.
- A primary objective of the Juvenile Justice System is to promote the concept of punishment for criminal acts. The system also strives to remove the ____________, provide treatment, training and rehabilitation.
Statutory Purposes: TFC 51.01
Texas Juvenile Justice System
- Safety & Protection of ________________
- Promote Concept of Punishment
- Remove Taint of Criminality
- Treatment, Training, & ________________
- Child & Parent ________________

Juvenile Justice System: FC 51.01
Statutory Purposes
- Wholesome Moral, Mental, and Physical ________________
- Control Commission of Unlawful Acts
- Achieve these Goals in ________________ Environment, if possible

Comparison of Terminology

<table>
<thead>
<tr>
<th>Warrant</th>
<th>Directive to Apprehend</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arrested</td>
<td>Taken Into Custody</td>
</tr>
<tr>
<td>Jailed</td>
<td></td>
</tr>
<tr>
<td>Bond/Bail</td>
<td>Released to Parents</td>
</tr>
<tr>
<td>Defendant</td>
<td>Respondent</td>
</tr>
<tr>
<td>Information/Indictment</td>
<td>Petition</td>
</tr>
<tr>
<td>Trial</td>
<td>Adjudication __________</td>
</tr>
<tr>
<td>Plea of Guilty/Not Guilty</td>
<td>Plea of True/Not True</td>
</tr>
<tr>
<td>Convicted</td>
<td>Adjudicated of Delinquent Conduct</td>
</tr>
<tr>
<td>Criminal</td>
<td>Child in Need of Supervision</td>
</tr>
<tr>
<td>Community Supervision</td>
<td>Probation</td>
</tr>
</tbody>
</table>

Introduction
Key Points to Remember

- Juvenile Law is a hybrid, civil case with a criminal flavor
- Juvenile cases significantly from adult criminal cases
- Juveniles are given constitutional protections similar to adult criminal defendants
- Governed by Title III of ________________________________ entitled “Juvenile Justice Code”

STRUCTURE OF THE SYSTEM

Texas Juvenile Justice System
Juvenile Boards: Human Resources Code Ch. 152

STATUTORY DUTIES

- Designate
  - Courts & Referees
  - Intake
  - Processing Offices & Places of Non-Secure Custody
- __________ Chief, Director
- Set Budget
- ______________ Secure and Non-Secure Juvenile Facilities
- Control terms and conditions of detention
- Set guidelines for ______________ of juveniles without leave of Juvenile Court
- Other annual and policy-related duties set forth in statute

Juvenile Courts: TFC 51.04

- Courts Eligible for Designation
  - District
  - Criminal District
  - Domestic Relations
  - County Court
  - County Court at Law
- Designation may change, but must __________ have a juvenile court in each ____________
- *If county court is designated, must have an alternate court*
- *County court may not hear ______________________ cases*
Probation Departments: Human Resources Code Ch. 141

Juvenile Probation Departments
- 165 Probation Depts.
- 51 Pre-Adjudication Detention Facilities
- 32 Post-Adjudication Secure Correctional Facilities
- 7 Post-Adjudication Nonsecure Facilities
- Approx. 3,000 JPOs
- Approx. 5,000 JDOs

Programs & Services
- Probation Services
- Specialized Offender Caseloads
- Family Programs
- JJAEPs & Education Programs
- Counseling, Life Skills, Parenting Programs
- Community Service Programs
- Operation Outreach
- Programs

Local System

Other Local Level Entities

- Commissioners Court
- Juvenile Prosecutor *(District or County Attorney)*
- Law Enforcement
- Service Providers
- Non-Profits & Organizations

Introduction
Unit A
Age Limits in the Juvenile Justice System

Jurisdictional Age

Code Definitions of Child, Juvenile & Minor
- Family Code
- Penal Code
- Alcoholic Beverage Code
- Transportation Code
- Education Code
- Health & Safety Code

Juvenile Justice Code
- DEFINITION OF CHILD: Texas Family Code, Title 3, Section 51.02(2)
  - ____________ years of age and under ____________;
  - 17 or older and under 18 and alleged/found to have committed conduct ____________
    turning 17.
Age Limits

- Minimum Age for __________ Program
- Minimum Age Juvenile Court Jurisdiction
- Minimum Age for Certification, 1st Degree, Agg. C. _____________ Felony
- Minimum Age for Certification _________________ Felonies
- Maximum Age of Juvenile Court Control *Exception: TFC 51.0412; 54.02
- Maximum Age of Offense Criminal Court Jurisdiction Begins
- Maximum Age of _____ Control Age 21 under old law
Minors & Jurisdiction

Minors & Alcohol
- MINOR means a person under 21 years of age.
- Alcoholic Beverage Code Section 106.001

Minors & Tobacco
- JP/Municipal court has jurisdiction over person 18 or younger
- Possesses, purchases, consumes or _____________ a tobacco product.
- Juvenile Court has _____________ jurisdiction to hear these cases.
- Health & Safety Code 161.257

Age & School Attendance
- CHILD shall ATTEND SCHOOL who is:
  - At least 6 years of age or enrolled in 1st grade prior to age 6
  - Not yet 18
  - Laws _____________ if enrolled after 18
- 16/17 if child has NOT obtained or is attending GED w/ permission or court order
- Education Code Section 25.085

Traffic Offenses
- JP/MUNICIPAL Court has jurisdiction over a person younger than 17 years of age:
  - Operating a Motor Vehicle in Violation of Traffic Laws
  - Juvenile Court
  - Exception 51.02(16) (A)
  - Transportation Code Chapter 729

Criminal Prosecution: Penal Code, Section 8.07
Prohibits prosecution for offenses committed when younger than 15 or prior to turning 17:
- EXCEPT:
  - Perjury (Concurrent Jurisdiction)
  - Chapter 729 Transportation Code Offenses
  - Municipal Traffic Violations
  - Fine Only Misdemeanors
  - Certification Transfers
Unit B
Offenses and Offenders

TYPES OF OFFENDERS

Non-Offender
TFC Section 51.02(8)

- Subject to court’s jurisdiction under TFC Title 5
  - Abuse, Dependency, Neglect
  - Reasons Other Than ________________________________ Conduct
- Held for ________________________________ out of the U.S.

Status Offender
TFC Section 51.02(15)

- Child accused, adjudicated or convicted for conduct that would ________________________________
  if committed by an adult

**Status Offenses**
TFC Section 51.02(8)

- School ________________________________ Related Offenses
- Running Away
- School Standards of ____________________________
- Violations of Alcoholic Beverage Code (Minors)
- ________________________________ Ordinance Violations
- Fine Only Offenses
- Fine Only transfers to juvenile court not punishable against adults

Delinquent Conduct
TFC Section 51.03

- Delinquent Conduct is conduct OTHER THAN A TRAFFIC OFFENSE, that ________________________________
  a penal law of Texas or the United States punishable by imprisonment or confinement in jail.
**Delinquent Conduct Offenses**
*TFC 51.03*

- Misdemeanors and Felonies (Texas and US laws)
- Contempt of JP or Municipal Court
- Driving While Intoxicated (DWI)
- Driving Under the Influence of Alcohol by Minor (DUIM) (3rd Offense)

**Certain Traffic Offenses**
- Traffic Offenses & Juvenile Court Jurisdiction
- A traffic offense means a violation of a penal statute under Ch. 729, Transportation Code, except for conduct for which the person convicted may be sentenced to imprisonment or confinement in jail.

**CINS**
*TFC Section 51.03*

- Conduct Indicating a Need For Supervision (CINS) is conduct, OTHER THAN A TRAFFIC OFFENSE, that is a
  - Class C Misdemeanor Offense
  - Penal ordinance of any Texas political subdivision

**CINS Offenses**

- Conduct Indicating a Need for Supervision
- School Attendance Related Offenses
- Paint and Glue Inhalation
- Fineable Only Offenses
- School Conduct -
- Contempt of STAR Court Order

- *(No longer Public Intoxication!)*
The Shadow Juvenile Justice System

- Municipal and justice courts are considered a “shadow” system because of procedural differences aimed at ______________ minor children.
- A child under 17 can be prosecuted for criminal charges in justice or municipal court.

Types of Criminal Offenses: CCP 4.11 & 4.14

Permissible Criminal Prosecution

<table>
<thead>
<tr>
<th>Perjury</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Concurrent Jurisdiction</td>
</tr>
<tr>
<td>• Required by Texas Constitution</td>
</tr>
<tr>
<td>• Fineable Misdemeanors</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Ordinance Violations</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Traffic Offenses</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Alcohol Violations, including Public Intoxication*</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Attendance Offenses—Failure to Attend</th>
</tr>
</thead>
</table>

Traffic Offenses: TFC 51.08; TC Ch. 729

- May not be __________________________ to Juvenile Court
- Reason for Excluding from Juvenile Court
- Exceptions:
  - A traffic offense means a violation of a penal statute under Ch. 729, Transportation Code, except for conduct for which the person convicted may be sentenced to imprisonment or confinement in jail.
Alcohol Violations: TFC 51.03(4); ABC 106.041

- Driving Under the Influence of Alcohol by Minor (DUIM)
- Punishment Scheme

School Attendance Offenses

- Failure to Attend School: TFC 51.03(b)(2)/ EC 25.094
  - Transfer of CINS School Attendance Case from Juvenile Court
  - 3 Days in 4 Weeks or 10 Days in 6 Months
- Parent ____________ to Nonattendance: EC 25.093
  - Written Warning then Offense
  - Contempt Power

JUSTICE & MUNICIPAL COURT

Dispositional Powers: CCP 45.051

- Fines
- Teen Court
- Deferred Disposition, including Special Expense Fee since 2009
- Self-Improvement Programs
- Community Service
- Alcohol Awareness Course
- Driver’s License Suspension
- Contempt of Court
TRANSFERS TO JUVENILE COURT & CONTEMPT

Fineable Misdemeanors and Ordinance Violations

<table>
<thead>
<tr>
<th>Transfer to Juvenile Court on 1st or 2nd Offense*</th>
<th>Transfer on 3rd and Subsequent Offenses</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Tobacco and Traffic Offenses are NOT Transferable; Public Intoxication cases ARE transferable</td>
<td></td>
</tr>
</tbody>
</table>

Contempt of Court: CCP 45.050(c)(1)/ TFC 51.03(a)(2)

JP has choice of either:

- Holding child in ___________ and issuing a fine of no more than $500; OR
- Referring child to juvenile court for delinquent conduct; OR
- Suspending ____________________________

Detention Issues: CCP 45.050(b)

No Authority to Detain

- Justice and municipal courts cannot order a child to detention under ________________ circumstances.
- The case must be transferred to juvenile court ____________________________.
- Juvenile intake decides whether the child meets the detention criteria
Release Alternatives: CCP 45.058

After 6 Hours Have Elapsed

- __________________________ to Responsible Adult
- Release with Citation to Appear
  - Only to a parent, guardian or responsible adult for PI.
- Take Before Magistrate for Release on Personal ________________
- Juvenile Detention Facility if Transferred to Juvenile Court by JP or Municipal Court; also
- Place of Non-Secure Custody

Places of Non-Secure Custody: CCP 45.058

- Designated by Head of Law Enforcement Agency
- __________________________ and Child Not Physically Secured
- Continuous _____________________ Surveillance
- Maximum of 6 Hours
Flow of a Juvenile Case

INTAKE

Preliminary Investigation

- Who Conducts?
  - ________________
    - Probation Officer / Intake Unit
    - Other Person Authorized by Juvenile Board

- Findings Required
  - Is the Person a ________________?
  - Is there _____________________________?
    - Delinquency / CINS
    - Non offender held for Deportation
Referral to Juvenile Court: TFC 53.01(d)

- Information Accompanying Referral
  - Information on Child
  - Statement of Delinquent Conduct or CINS
  - Statement of Circumstances of Taking Child into Custody
  - All Prior ________________, if law enforcement

Referral to Prosecutor: TFC 53.012, TFC 53.01 (e) & (d)

- Mandatory Statutory Intake Referral Plan
  - Defined by Family Code
  - Murder & Capital Murder
  - All felonies and misdemeanors involving ____________________________ or ____________________________ to be reviewed by prosecutor

- Alternative Intake Referral Plan
  - Prosecutor and CJPO
  - Approved by Juvenile Board
  - Register Plan with TJPC

Informal Dispositions

INFORMAL DISPOSITIONS

Supervisory Caution
Level 1 Progressive Sanctions
Counsel with Parent and Child; Refer to Social Services

Deferred Prosecution
Level 2 Progressive Sanctions
6 mos. voluntary probation plus 6 month extension
Supervisory Caution: TFC 59.004

- Progressive Sanctions Level ________________
- Probable Cause
- Types of Dispositions
  - Referral to ________________ (STAR, social services, citizen intervention program)
  - Conference with Child
  - Conference/Letter to ________________

Deferred Prosecution: TFC 59.005, TFC 53.03

- Informal Contractual ________________
- Restrictions of Deferred Prosecution
- Probable Cause and Child’s Consent
- No ________________ of Child
- Privilege Against Self-incrimination

Intake Decision: TFC 52.04(d), TFC 53.01, TFC 52.01(b)

- Detain or Release?
- Parental Notification
  - Prompt
  - Explain ________________ for referral
    - Notice is ________________ even if child is referred but not in custody

Conditions of Release: TFC 53.02(a)

Release may be conditioned on: requirements reasonably necessary to ensure the child’s appearance in court.

Conditions must be

- In ________________
- Furnished to ________________
- Filed with office/official designated by juvenile board

Unit D: Juvenile Court Intake
Violations of Conditions of Release

- If a child is released on conditions, the release order may be ________________ and the child can be taken into custody on the original case.
- How?
  - Issuance of DTA
  - Probation officer w/ probable cause takes child into custody
Juvenile Detention

Firearm Offenses: TFC 53.02(f), TFC 54.01(p)

- Juveniles referred for FIREARM OFFENSES must be detained ________________ either:
  - INITIAL detention hearing or
  - CHILD IS RELEASED at the direction of a juvenile judge, substitute judge or a referee.
DETENTION

Initial Detention Hearing: TFC 54.01

- Not later than 2nd WORKING DAY ______________ child taken into CUSTODY
- Friday or Saturday Arrest:
  - 1ST WORKING DAY after child taken into custody
- Thursday, Friday, or Saturday Arrest:
  - Following Monday, unless a holiday.
- 48-HOUR RULE: Judicial determination of probable cause

Court Conducting Hearing: TFC 51.04

- Any DESIGNATED COURT; or
- ANY MAGISTRATE, if the judge of the juvenile court or any alternate judge is unavailable.

Timely Appointment of Counsel

<table>
<thead>
<tr>
<th>Attorney at Initial Detention Hearing</th>
<th>Upon Release by Intake or Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Continues to represent child until TRIAL or REPLACEMENT</td>
<td>• Attorney must be appointed within 5 WORKING DAYS of service of petition for:</td>
</tr>
</tbody>
</table>

- Adjudication
- Modification
- TYC Commitment/Boot Camp
Detention & Filing of Petitions

A child placed in detention is entitled to be released if ______ has been filed:

<table>
<thead>
<tr>
<th>Within 30 WORKING DAYS</th>
<th>Within 15 WORKING DAYS</th>
<th>Juvenile Board may impose earlier deadline</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Capital Felony</td>
<td>§ TFC 54.01(p)</td>
<td>§ TFC 54.01(q-1)</td>
</tr>
<tr>
<td>• 1st Degree Felony</td>
<td>• All other offenses</td>
<td></td>
</tr>
<tr>
<td>• Aggravated Controlled Substances Felony</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Duration of Detention Orders

DELINQUENT CONDUCT

Routine Detention (10 working days)  Subsequent Orders-No Facility  (15 working days)

DEFERRED PROSECUTION

No detention for child on deferred.  TFC 53.03(b)

STATUS OFFENDERS

Routine Detention (24 hours after arrival)  Return out-of-state Runaway home (5 days)

Non-Offenders held for Deportation: TFC §54.011

Initial 24-hour period (excluding weekends or holidays)  Class B Misdemeanor for JDO or others  Entitled to Immediate Release  Civil Action
Confined Juvenile Witness

- Upon issuance of a _________________, a juvenile confined in TYC or secure juvenile detention or placement may be released to a peace officer or probation officer for transport to and from court.

- Detention Options:
  - <17 = certified juvenile detention facility
  - 17 or older = county jail without bond

PLACE & CONDITIONS OF DETENTION

A child may be detained only in:
### Age & Detention Placement

<table>
<thead>
<tr>
<th>10-18</th>
<th>17</th>
<th>18</th>
</tr>
</thead>
<tbody>
<tr>
<td>Confinement in certified juvenile facility for offenses committed while ________ a juvenile.</td>
<td>Adult Detention</td>
<td>Certification as Adult</td>
</tr>
<tr>
<td>TYC Escapee</td>
<td>TYC Escapee</td>
<td>Appeal Reversal or Remand</td>
</tr>
<tr>
<td>Violation of TYC Parole</td>
<td>Violation of TYC Parole</td>
<td>May be detained in either a juvenile or adult detention facility;</td>
</tr>
<tr>
<td>Choice of Facility</td>
<td>Choice of Facility</td>
<td>Court may Set or Deny Bond</td>
</tr>
<tr>
<td>17 YO Probationer Commits ______ Offense</td>
<td>17 YO Probationer Commits ______ Offense</td>
<td>Other ADULTS--Choice of Facility</td>
</tr>
<tr>
<td></td>
<td></td>
<td>When prosecuted under 8.07(a)&amp;(b) in 54.02(j)(2)(A) transfers</td>
</tr>
</tbody>
</table>

### Annual Certifications & Inspections, TFC 51.12 & 51.125

- A majority of juvenile board must inspect:
  - public or private pre/post secure facilities and non-secure facilities.
- Facility suitability or unsuitability is determined by statutory juvenile board guidelines.
- Govt. unit, private entity or contractor operating a facility must register with TJPC.
- TJPC must monitor facilities ________________________.
- TJPC may deny, suspend or revoke registration for noncompliance with standards.
Unit F

Petition & Summons

Petitions: TFC 53.04, TFC 51.19

- Petition
  - The charging _______________ that sets forth the alleged conduct
- A petition must be filed:
  - as _______________ as practicable; and
  - within the statute of limitations period

Answer Pleadings

- Original Answer
  - Filed by child’s _______________ to respond to or answer a petition.
  - Responds to _______________ by either denying or admitting, in whole or in part.
- General Denial
  - A general denial answer denies every allegation in the petition.
  - Giving no answer to the State’s petition is viewed as a general denial.

Service of Summons: TFC 53.06, TFC 53.07, TFC 54.05(d)

- A summons is a document _______________ a party to appear before the court.
- Personal Service on Child
  - Actual delivery of petition and summons to the party served to appear before the court to answer allegations.
  - Reasonable Notice to Others

Who May Serve Petition and Summons?

<table>
<thead>
<tr>
<th>Sheriff</th>
<th>Constable</th>
<th>Any suitable adult that the juvenile court directs</th>
</tr>
</thead>
</table>

Unit F: Petition & Summons
Unit G
The Adjudication Hearing

Key Court Hearings

Detention Hearing

Hearing to determine whether probable cause exists that child committed an offense and child should be in custody pending trial.

Adjudication Hearing

The _________ phase of a juvenile trial to determine guilt or innocence.

Disposition Hearing

Separate distinct hearing to determine appropriate disposition or punishment.

Modification Hearing

Hearing to modify or _________ the original disposition of the court.

The Key Players in Court

- Judge, Associate Judge, Magistrate, Referee
- State’s Attorney or Prosecutor
- Juvenile
- Juvenile Attorney
- Witnesses
- Court Reporter
- Bailiff
- Clerk/Court Coordinator
Confidentiality of Juvenile Hearings: TFC 54.08

Victim and victim’s family cannot be ____________________________ from courtroom unless their testimony would be materially affected

Adjudication Hearing Requirements

- Hearing Required, TFC 54.03(a)
  - Waiver of Hearing ____________________________
  - Stipulation of Evidence
- Judicial Admonitions to Child, TFC 54.03(b)
  - Allegations
  - Nature & Consequences; Including Admissibility of Record
  - Privilege Against Self-Incrimination
  - Right to Trial and to Confront Witnesses
  - Right to Jury Trial
  - Right to an Attorney
**Adjudication Hearing—Jury**

Jury Trial

- Unless Child and Attorney Waive Right, TFC 54.03(c); TFC 51.09
- _____________ Verdict Required

**Size of Jury**

- **District Court**
  - 12 (Petit & Grand)

- **District Court**
  - 6 (Misdemeanor Cases)

- **Determinate Sentence**
  - 12

- **County Court**
  - 6 (Non DS)

_________________ of Proof, TFC 54.03(f)

- Proof Beyond a Reasonable Doubt

**Plea Bargaining, TFC 56.01(n)**

- Plea must be knowing, ________________ and intelligent.
- If court does not accept then child may withdraw plea TFC 54.03(j)
- Court may review the Social History Report after the adjudication decision

**Plea Bargains**

- Require permission of the trial court to appeal all issues _________________ those relating to pre-trial motions
Social History Report

Adjudication Hearing, TFC 54.03(d)

- May _____________ be viewed by Court* or Jury
  - Exception:
    - Detention Hearings
    - Discretionary Transfers
- Provided to Child’s Attorney Before Hearing
- Prepared by JPOs, Professional Court Employees or Consultants
Unit H
Disposition Hearing and Options

Formal Dispositions

Prosecutorial Decision As To Procedural Route

- Regular CINS Petition
- Regular Delinquency Petition
- Modification Petition for Probation Violation
- Determinate Sentence Petition
- Certification as an Adult

Level 3 Probation
Level 4 ISP

Level 3 Probation
Level 4 ISP
Level 5 Secure Placement
Level 6 TYC Commitment

Level 7 – Determinate Sentence
- 10 Year DS Probation
- Felony 10 - 120 Years
- Felony 20 - 30 Years
- Felony 30 - 40 Years

Level 7 – Certification
Transfer to Adult Criminal Court
Disposition Options

- 3 Basic Categories

Disposition without referral to court (i.e., __________)

__________ Proceedings

______________

Proceedings

Progressive Sanctions Guidelines

- Provide guidance and _____________________ in dispositions

Disposition Hearings, TFC §§54.04(c), (f); 61.105

- A separate, distinct hearing;
- Held _________ the adjudication hearing;
- No right to _________, unless determinate sentence;
- Like the sentencing phase in adult cases;
- The court may adjudicate and impose no disposition.
- The only issue at disposition is: what is the best course of ________________________ for the respondent.
- Parents have a right to address the court and give an oral statement.
- The court shall state reasons for the disposition in its order and furnish a copy to the child.
Disposition Findings

Required Findings for Disposition, TFC 54.04(c)

- No disposition unless the court finds –
  - child is in __________ of rehabilitation
  - public __________ requires a disposition.
- Otherwise, DISMISS without final or formal disposition.

Authorized Dispositions, TFC 54.04(c) and 54.04(i)

- After the juvenile court makes its findings, it may employ the following authorized dispositions.
Communication with CPS Court

- Juvenile court may communicate with court having continuing jurisdiction over a child’s CPS case before disposition hearing.
- Juvenile court may also allow parties to the SAPCR to participate in communication.
- **Goal of 2009 Reform**
  - For juvenile court to obtain as much information as possible about child before making disposition decision.

PROBATION
Length

- Until Child Reaches Age 18
- *(2 Year Minimum for Certain Felony Sex Offenses against a Victim under age 17)*

**Probation Conditions, TFC 54.04(d)**

- Mandatory ______________________ Service
- Home Placement
  - Relative or Other Fit Person
  - Foster Home
- Public or Private Agency or Institution, except TYC

**Additional Probation Conditions for Handgun Offenses, TFC 54.0406**

- Child _____________________ possessed handgun
- Mandatory condition: Child must reveal how handgun was acquired, including date, place and person
- Information revealed may not be used against child
- JPO must notify local law enforcement of __________________________

**Thumbprints, TFC 54.04(j)**

- Required for juveniles adjudicated for:
  - All ______________________
  - All ______________________ misdemeanors

*Photographs may also be attached*

Unit H: Dispositional Hearing and Options
Inter-County Transfers

What is ICT? Inter-County Transfer of Probation Supervision (ICT) is a formal mechanism for transferring probation supervision and jurisdiction to another county.

1. A CHILD on probation MOVES to another county;
2. SC NOTIFIES RC about the child’s move;
3. RC ACCEPTS child’s case (unless basis to refuse);
4. SC SENDS required DOCUMENTS to RC;
5. RC SUPERVISES the child for 180 days; and
6. Jurisdiction automatically TRANSFERS to RC after 180 days.

PLACEMENT

Mandatory Court Findings

- Placement __________________________ of Home
  - Need for Disposition
  - Best Interest to be Placed or Committed to TYC
  - Reasonable Efforts Made to ________________ at Home
  - Probation in Home Not Possible
  - Reason for Disposition

Post-Adjudication Facilities

- May not place:
  - Juvenile Adjudicated for Contempt of JP/Municipal Court
  - ____________ Offenders
- Except: Repeat Offenders where all other dispositions are exhausted or clearly inappropriate

Unit H: Dispositional Hearing and Options
TYC Commitment

- Requires delinquent adjudication
  - ________________ only

- Transfers jurisdiction to TYC exclusively

- Transport by Probation or Sheriff
  - not TYC

- Minimum lengths of stay may apply
  - Determinate

- Commitment cannot extend beyond 19th birthday

- Length of commitment and release is decided by TYC
  - Indeterminate

SB 103 - 80th Legislative Session, Effective June 8, 2007

- TFC Sections 54.04 (s) and (t) were repealed.
  - Prohibits the commitment of ANY misdemeanor offenders to the TYC, including those with prior felony offenses.
TYC Commitment

Eligibility for Original Dispositions

Felony
A child may be committed to TYC on a ________ ________.

Felony Violation
A child may be committed to TYC on an ________ ________.

Contempt of Juvenile Court or Justice and Municipal Court does not count as a “strike” toward TYC commitment.

OTHER CONDITIONS

Driver’s License Suspension, TFC 54.042

- DWI
- Controlled Substances
- Dangerous ______
- Volatile ________
- Trafficking in Persons

Mandatory Suspension

- Any Adjudicated Child Up to 12 months

Discretionary Suspension

Limits license suspension or denial for juveniles for up to _______________________.

Unit H: Dispositional Hearing and Options
Special Probation Conditions

- Cruelty to _________________, TFC 54.0507
  - Required probation condition for adjudications of Cruelty to Animals (PC 42.09)
  - Psychological counseling for a period determined by the court.
- Desecrating Cemetery/Abusing _________________
  - Mandatory restitution to affected cemetery
- Restitution Alternatives, TFC 54.0507
  - _________________ Service
  - _________________ from parent or other responsible person

DNA Sample on Certain Felony Adjudications

- DNA samples as a condition of probation required for juveniles placed on probation on/after Sept. 1, 2009, for the following felony conduct: (TFC §54.0409)
  - Offenses listed in Art. 42.12, Sec. 3g, CCP; or
  - Using or exhibiting a _________________ during or while fleeing the commission of the offense.
- Mandatory fees must be collected from child, parent or other responsible person: (TFC §54.0462)
  - $34 if disposition does not include TYC commitment;
  - $50 if disposition does include TYC commitment.

Conditions of Probation involving Graffiti, TFC §54.046

- Since 2009, mandatory condition of probation requires child to perform:
  - at least 15 hrs CSR if loss is $50 - $499; or
  - at least 30 hrs CSR if loss is $500 or more.
- Payment of restitution (or restoration of victim’s property) now also _________________ condition of probation.
- JPD must _________________ juvenile court when restitution has been fully paid.
Gang-Related Conduct
- Gang-related conduct means committing Class B offense (or higher) with intent to:
  - Further criminal activities of gang to which child belongs;
  - Gain gang membership; or
  - Avoid __________________________ as a gang member.
- Mandatory condition of probation for engaging in gang-related conduct includes:
  - Gang Intervention Program with 12 hrs instruction; and voluntary __________________________ removal.

Collection of Juvenile Fees

Authorized Fees

- Restitution --TFC 54.041;
- Attorney’s Fees - TFC 51.10(e);
- DNA Sample Fee – TFC §54.0462;
- Juvenile Probation Diversion Fund - TFC 54.0411(a);
- Juvenile Probation Fees-- TFC 54.061;
- Juvenile Delinquency Prevention Fees --TFC 54.0561;

Exception: No fees for participating in JJAEP—EC 37.012

Restitution, TFC §54.041
- Payment to __________________________ by Child and/or Parent
- Promote Child’s Rehabilitation
- Appropriate to Child’s development and not conflict with Child’s __________________________
- “Good Faith Effort” defense for parents who try to prevent child from engaging in delinquent conduct
Juvenile Justice Alternative Education Programs (JJAEPs)

- Created in 1995 to provide an alternative education setting for ____________ student to end expulsion to the streets.
- Mission is to enable students to perform at grade level.
- Focus on ____________ curriculum subjects.

Students Populations Served

Expulsion Categories

- Mandatory – Educ. Code 37.007 a, d, or e
- Discretionary – Educ. Code 37.007 b, f, or c
Orders Against Parents & Other Adults

- Child Support if Child Placed Outside of Home
- ____________________________ Orders
- Attendance Related Classes
- Family _______________________
- Court Costs ($20) and Supervision Fees ($15 month)
- Payment of _________ Sample Fees, TFC §61.002
- Community Service
  - Good Faith Effort defense – to prevent delinquent conduct

*Note* – Parental Orders may be transferred to another county under the Inter-County Transfer statutes.

Parental Rights & Responsibilities: TFC Chapter 61

Entitles the parents to:

- information and notice; communications w/ child at processing, detention, TYC;
- submit a written or oral statement in court regarding needs of the child at disposition

Sets forth the parental obligations and procedure for Motion for Enforcement upon non-compliance.

Authorizes from one enforcement matter

- a single fine up to $500
- single jail sentence of up to six months
Liability of Parents for Conduct of Child: Title 2, Texas Family Code, Ch. 41

Property Damage

- A parent or other person who has the duty of control and reasonable discipline of a child is 
  _________________ for any property damage proximately caused by:

  o The negligent conduct of a child if the conduct is reasonably attributable to the 
    negligent failure of the parent or other person to exercise that duty; or
  o The willful and malicious conduct of a child who is at least 10 but under 18 years of age

Limits of Damage

Recovery for damages caused by willful and malicious conduct is limited to actual damage not to exceed 
_______________ per occurrence, plus court costs and reasonable attorney’s fees.
Unit J
Progressive Sanctions

Progressive Sanctions Model

- The Progressive Sanctions Model is a set of discretionary statutory guidelines for making dispositional decisions.
- *Graduated guidelines:*
  - Assist in formulating appropriate sanctions based on offense and past delinquent behavior and dispositions.
  - Reflect how the system should work when resources are available to meet needs.
  - Encourages language for reporting, planning and dispositions.

![Diagram of Progressive Sanctions Model](image-url)
Progressive Sanctions Levels

1. Level 1 – Supervisory Caution
2. Level 2 – Deferred Prosecution
3. Level 3 – Probation
4. Level 4 – Intensive Services Probation
5. Level 5 – Secure Correctional Placement
6. Level 6 – Indeterminate TYC Commitment
7. Level 7 – Determinate TYC Commitment or Certification as Adult
Unit K

Sex Offender Dispositional Options

Sex Offender Probation Conditions: TFC 54.0405

- Mandatory _________________ 2-year probation term
- Registration as a sex offender under CCP Ch. 62
- Discretionary sex offender treatment and polygraph
- Mandatory submission of blood for _________________
- Mandatory HIV testing for adjudications of indecency w/ a child, sexual assault, aggravated sexual assault

Sex Offender Registration / Federal Legislation

1994
- Jacob Wetterling Act – states required to have sex offender registration program within _________________. [Public Law 103-322].

1995
- Megan’s Law – states required to have community ________________ program within 3 years. [Public Law 104-145].

1996
- Pam Lychner Sexual Offender Identification and Tracking Act – states required to participate in ________________ Sex Offender Registration under FBI direction. [Public Law 104-236].

Juvenile Sex Offenders

- Prior Law Required ALL Juvenile Sex Offenders to Register with Information on ________________
- Juvenile Sex Offenders seen as:
  - More ________________ to treatment and
  - Less likely to ________________
- Texas now permits Juvenile Court to balance the protection of the public with the harm registration inflicts on the juvenile and his or her family
Chapter 62: Code of Criminal Procedure

Organization of Code of Criminal Procedure Chapter 62

Court Registration Options

Four Possible Decisions Court May Render:

- ________________ (Exempt) All Registration
- FULL REGISTRATION, including public access (Internet)
- ________________ REGISTRATION accessible only by Criminal Justice Agencies
- DEFER DECISION until after juvenile completes court-ordered sex offender treatment:
  - Unless state moves for hearing after treatment completed, registration excused
  - Appropriate therapy, not just specialized sex offender treatment
Expiration of Duty to Register
A juvenile’s duty to register _________ 10 years after the completion of the terms of disposition.

- Under the current law, juveniles are not subject to ________________ registration even if convicted or placed on deferred when certified to adult court. * [CCP 62.101(c)]
  - The Adam Walsh Act may make this no longer true if identical provisions are enacted in Texas.

Registration Remedies

- Two (2) Remedies that excuse or eliminate sex offender registration—

Un-registration
- of a juvenile who has been adjudicated but not yet registered
- “exempt”, i.e., excuse registration

De-registration
- of a juvenile who is already a registered sex offender
- “terminate” registration

Unit K: Sex Offender Dispositional Options
Adam Walsh Act

- Federal legislation enacted in 2006
- Certain provisions apply to juveniles
- ______________________ the national sex offender registry
- Length of registration is based on ________________________:
  - Tier 1 = 15 years
  - Tier II = 25 years
  - Tier III = life
  - *E.g.*, *Aggravated SX Assault = life*
- May alter CCP Ch. 62
- May curtail judicial discretion to:
  - *exempt or defer*
  - *allow non-public registration*
- In 2009, Texas Legislature did not adopt Adam Walsh.
Modification of Dispositions: TFC 54.05

- __________ disposal, except a TYC commitment, may be modified by the juvenile court until—
  - the child reaches his 18th birthday;
  - the child is __________________ by the court; or
  - by operation of law.
- All dispositions automatically __________________ when the child reaches his 18th birthday, except for commitments to TYC.

Petition & Notice

**Notice**
- Reasonable notice – 10 days TFC 54.05(d)
- Personal service on child. TFC 54.05(d)
- Reasonable Notice to Others;

**Modification Petition**
- The petition should contain:
  - Probation term violated
  - Child’s act violating order
  - Prayer for relief
Modifications

- Procedural Aspects
  - Any party may request
  - No right to __________
  - Court considers reports after hearing on facts
  - Order should contain ________________ and reasons
  - Probation may be extended or revoked, if petition filed prior to expiration

- Waiver of Hearing
  - May waive if parent or attorney consents
  - No waiver of revocation to TYC
  - No waiver for placement in post-adjudication secure facility for more than 30 days

Probation Violations

- Taking a Child Into Custody
  - A probation officer may take a child into custody if there is probable cause to believe child ________________ conditions of probation.

- Proving A Probation Violation
  - Preponderance of evidence
  - Reasonable probation condition
  - Revocation for failure to __________
    - Ability to Pay
    - Child’s Burden of Proof

Required Findings: TFC 54.05(m)

Probation or TYC Placements

Court order must have these findings—

- Best ________________ to be Placed or Committed to TYC
- Reasonable Efforts Made to Keep at ________________
- Probation in Home Not Possible

Unit L: Sex Offender Dispositional Options
Determinate Sentencing

- Determinate sentencing is an ________________ option for certain felony offenses;
- Used in lieu of normal delinquency proceedings or waiver of jurisdiction and transfer to criminal court.
- Also referred to as “blended” or “hybrid” sentencing.

Violent & Habitual Offenses

Determinate Sentence Offenses include:

- Listed in TFC Sec. 53.045
- Defined in TFC 51.031

Including ...

- Capital Murder
- Murder
- Attempted Capital Murder
- Aggravated Kidnapping
- Aggravated Sexual Assault
- Attempted Murder
- Sexual Assault
- Aggravated Robbery; and
- Other Offenses
Pre-Trial Procedure

Invoking the Statute

- The decision to seek a determinate sentence is within the discretion of the prosecutor TFC 53.045(a).

DS Petition Filed TFC 53.04; 53.045

Presented to the Grand Jury for a Vote

Grand Jury Approves or Rejects TFC 53.045(b)

Nine (9) Members of GJ Approve = Probable Cause Finding. (Not an indictment)

Certificate of Approval

Determinate Sentence Adjudications

- ____________________ formal requirements as an adjudication hearing;
- County Judges, Referees or Masters cannot hear a DS case. TFC 54.10(e); TFC 51.04(c)
- DS cases ____________________ felony proceedings;
- Right to 12-person jury;
- Right to jury at punishment stage;
- ____________________ verdict required;
- Lesser included or not covered offenses = regular delinquency proceeding
Grand Jury Fails to Approve

If the grand jury fails to approve, the prosecutor can:

- Proceed with an __________ delinquency petition;
- Re-present the petition to the same or a successor grand jury to seek approval (need new evidence); or
- Seek “certification” of the child – waiver of jurisdiction and transfer to adult court

Basic DS Dispositions

Three (3) basic dispositions a judge or jury can make in a determinate sentence case:

- **No disposition necessary**
- **Commitment to TYC w/ possible transfer to TDCJ**
- **DS Probation w/ possible adult supervision transfer @ 18**
**Determinate Sentence Probation**

- The court or jury may award ______________ in a determinate sentence case.
- Court or jury may give determinate sentence probation for up to 10 years.
- Applies to offenses on/after 09/01/99.
- If punishment is > 10 years
  - Juvenile may get probation for no more than 10 years
- If Probation extends past 18th birthday-court may:
  - Terminate probation
  - ______________ case to district court

---

**Punishment & Lengths of Stay**

**Punishment Ranges**

- **0 to 40 YEARS**
  - Capital felony
- **0 to 20 YEARS**
  - Second degree felony
- **0 to 10 YEARS**
  - Third degree felony
- **0 to 10 YEARS**
  - Aggravated controlled substance felony
Statutory Minimum Lengths of Stay

- 1 year
  - 3rd degree felony
- 2 years
  - 2nd degree felony
- 3 years
  - 1st degree felony
- 10 years
  - CAPITAL

TYC Release/Transfer

Release Options

- TYC ADMINISTRATIVE PAROLE
- EARLY PAROLE by Juvenile Court
- Transfer to TDCJ-ID
  - Age 16 with juvenile court order
  - Age 19 Administrative for Capital Murder
Certifications

- Certification is a judicial determination to transfer a juvenile to ____________ criminal court.
  
  *Also called,*
  
  - discretionary transfer
  - waiver of jurisdiction
  - Ends constitutional protections available in the juvenile system.

- Case is transferred to the adult criminal system for prosecution.

- Appealed only after _____________________________

14 Year Old

- Capital Felony
- First Degree Felony
- Aggravated Controlled Substance Felony

15 or 16 Year Old

- _________________ felonies

Criteria for Transfer

- Offense against _________________ or property
- Sophistication and maturity of child
- Record and _________________ history of child
- Prospects for public protection and rehabilitation in juvenile system
Certification Hearings

Procedural Basics

State Petitions for Discretionary Transfer

Issues summons

Due Process including

- notice of the charges or allegations
- right to counsel
- right of confrontation
- privilege against self-incrimination

No jury

Summons

Discretionary transfers

Fair notice

Mandatory transfers

Personal service is required for jurisdiction

Required Background Studies

- Diagnostic ________________ by a psychiatrist or psychologist
- Social Evaluation
- Full __________________________ of Child and Offense
- May Update Recent Report
- Report Admissible in Court
- Complete If Child Does Not Cooperate
Certification Requirements Discretionary Transfers

Transfer Findings

- Felony
- No ________________ adjudication hearing
- Probable cause
- Seriousness of offense
- Child’s ______________________
- Community welfare requires criminal proceedings

Certification

Mandatory Transfers

- Specified ________________ while 14, 15, or 16
- Murder or Capital Murder committed between the ages of ______________________
- Not Practicable to Proceed Before 18 because:
  - No probable cause, or
  - Person ________________ and could not be found, or
  - Appellate court reversed, or
  - Reason ____________________ state’s control
- Probable Cause Shown
- Transfer or Dismiss

Concept of Once Certified

Mandatory Transfers

- “Once certified, always certified”
- Juvenile court must certify
  - If...
    - Prosecutor Files Transfer Petition
    - Felony Charge
    - Prior Viable Transfer Order

Unit N: Discretionary Transfers to Criminal Court
Post-Transfer Proceedings

- Child Transported to Adult Jail
- Examining Trial or Grand Jury
- Transfer Order Required
- Court Prosecutes Only Conduct Transferred
- Transfer Appealed after Conviction
Unit O
Confessions in Juvenile Cases

Texas Juvenile Confession Statute
- TFC 51.095 is the Texas Juvenile Confession Statute
- Applicable to written, oral and recorded statements
- Requires legal warnings be given to a child by any __________________________
- Referees and masters can magistrate--do not need court ratification.

Required Warnings

- Right to remain
- Anything said can be used ______ you
- Right to ______ appointed if cannot afford
- Miranda Warnings
- Interview

Any magistrate may give warnings.
Confessions

Taking Statements: TFC 51.095 & 51.095

- Before taking a child’s statement
  - NO DELAY
  - NO OTHER PLACE

- Voluntary oral statements are admissible w/o TFC 51.095 requirements

JUVENILE PROCESSING OFFICE

NON-CUSTODIAL

- DETENTION FACILITY
- OTHER CONFINEMENT
- OFFICER’S CUSTODY
- DFPS POSSESSION
- Child ______________ CUSTODY

CUSTODIAL STATEMENTS

TO MAGISTRATE

- Before QUESTIONING
  - Given WARNINGS
  - Custodial INTERROGATION
  - Considered Waivers
  - Reduced to Writing
  - Signed, Accepted & Certified

- Statements to JPOs must comply w/ the juvenile confession statute 51.09 & 51.095.
- MAGISTRATE supervision required for custodial and detention written statements & MIRANDA for oral statements leading to evidence.

PROBATION OFFICERS

LAW ENFORCEMENT

- Child may not be questioned at magistration
  - May NOT be PRESENT unless necessary court safety
  - May not CARRY A ____________
Admissibility of Statements

**ORAL STATEMENTS**
- Non-custodial statements are ADMISSIBLE. If made while IN ____________, are INADMISSIBLE unless exception applies. Miranda Warnings are ______________ for statement to be admissible.

**RECORDED STATEMENTS**
- ADMISSIBLE if voices ID’d, includes warning and waiver, accurate and unaltered. Copy to child’s attorney w/in 20 days.

**VIDEOTAPED STATEMENTS**
- ADMISSIBLE if magistrate determines statement was given ________________.

**WRITTEN STATEMENTS**
- Magistrate’s supervision and processing is required in order for custodial written statements to be ADMISSIBLE.

Confessions

When is a Child in Custody? Section 51.095(d) and 52.01 TFC--

- Pursuant to a court order
- Directive to Apprehend (DTA)
- Probable Cause Arrest
- On-sight Arrest
- On-sight Violation of Probation
- A probation officer may take a child into custody upon probable cause of a violation of probation or a condition of release.
- In the possession of DFPS and suspected of a crime.
Confessions

Non-Custodial Statements
- A child’s statement is ADMISSIBLE under TFC 51.09 and 51.095 if –
  - Statement does not stem from a custodial _________________________
  - Statement was voluntary and has a bearing on the credibility of the witness, regardless of whether interrogation was custodial.
- Admissibility
  - Evidence which the judge or jury determines will be ___________ to the trier of facts.

Validity of Waiver of Rights
- Waiver of Rights TFC 51.09
  - Made by child and attorney
  - _________________________, understands rights and consequences
- Courts will Consider
  - Age of Child & Ability to Understand Rights & Warnings plus
- TOTALITY OF THE CIRCUMSTANCES TEST
  Applied to determine validity and voluntariness of waivers--
  - Age, maturity, intelligence, experience
  - Length of time w/ police
  - Failure to advise of rights
  - Failure to give warnings in _________________ of juvenile
  - Isolation from family or friendly adult advice
  - Police questioning tactics
  - Delay in taking to magistrate

Fruit of the Poisonous Tree
- Known technically as the “derivative evidence rule”
  - If evidence has been ILLEGALLY OBTAINED, not only is that evidence ___________ but also excluded is any evidence obtained __________________________ of the illegally obtained evidence.
  - In re H.V. – Evidence may be suppressed only if counsel shows evidence was obtained through ______________________ or was involuntary. (April, 2008)
Unit P
Mental Illness and Retardation Proceedings

Definitions

**Mental Illness**

- An illness, disease or condition that substantially ________ a person’s thought, perception, reality, emotional process, judgment or grossly impairs behavior. **HSC 571.003(14).**

**Incompetence to Stand Trial**

- A child in juvenile court who, as a result of MI or MR, lacks capacity to _______________ the court proceedings or to assist his or her own defense may be considered “unfit to proceed”...as long as such capacity endures. **TFC 55 Subchapter C.**

**Mental Retardation**

- Significantly _________________ general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period. **HSC 571.003(7).**

Referral to Local MH Authority, TFC §51.20

- Requires juvenile probation department to refer a child to the local MHMR authority when:
  - __________ scores indicate need for further assessment;
  - No access to mental health professional;
  - Professional determines child is MI or MR and is ______ currently receiving services;
  - And. . . requires department to report each referral made to the Texas Juvenile Probation Commission.

*At any stage of the proceedings, the juvenile court may order a child to be subjected to a physical examination by a licensed physician. HB 1575 79th L.S.*

Unit O: Confessions in Juvenile Cases
Fitness to Proceed

- Constitutional requirement
- Information required to mandate hearing
- Party asserting unfitness must prove by preponderance of evidence
- If unfit, then commit to MHMR for services
- Hearing to ____________ fitness to proceed

Insanity Defense

- MIMR child did not ______________ wrongfulness of conduct or could not conform conduct to law
- Court orders a psychiatric exam
- Affirmative Defense - preponderance of evidence
- Does not apply to certification hearing
Unit Q

Rights of Victims

TFC Chapter 57 deals with victims of juvenile offenses and their rights in proceedings.

Texas Constitution

Basic Rights

- Right to be treated with fairness and ______________ for victim’s dignity and ______________.
- Right to be __________________________ from the accused throughout the process.
- Other rights asserted by the victim.

A victim, guardian or close relative of a victim is entitled to rights under TFC 57.002.
A victim of juvenile crime has a right to

- Be ________ at all public proceedings
- Prompt return of __________
- Right to a secure, separate ______ or of safeguards prior to testifying in court
- Consideration of safety as an element of decision to detain a juvenile offender
- Receive adequate protection from harm or threat of harm
- Be ________, upon request, of proceedings
- Advise the court of the ________ of the crime
- Receive information and participate in the release or parole transfer proceedings
- Receive information regarding compensation and services
- Any other appropriate right

Duties of Juvenile Board

- Juvenile Board shall ensure that victim is afforded rights and an explanation of those rights;
- Designate a victim services coordinator to provide;
  - Notice of rights
  - Compensation Application
  - Victim Impact Statement
  - Assistance with form completion
- TFC Section 57.0031 outlines notification duties of the juvenile probation office or designated crime victim coordinator.

Unit Q: Rights of Victims
Rights of Victims

- Department may not be held ________________ for failure to provide a right or service nor may it used as a basis for appeal. TFC 57.006 & 57.006
- Victim does not have standing to ________________ the disposition of the juvenile’s case. TFC 57.007
- Order for Protection from Juvenile
  - Court may issue to protect victim from further risk of harm because of participation in proceedings.
  - Prohibit or require child to acts necessary to prevent further harm to victim.

Victim Impact Statement

- A **victim impact statement** is used in juvenile court to—
  - Describe how a child’s delinquent conduct has ________________ the victim and others
  - Describe the crime and its physical, emotional, and financial ________________
  - Discuss concerns about safety and security
  - Address ________________ experienced since the crime occurred
  - Offer suggestions for a resolution
Unit R

Juvenile Records

Criminal v. Juvenile Records

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<th>Criminal</th>
<th>Juvenile</th>
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<td>Trial/Adjudication</td>
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</tr>
<tr>
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<tr>
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<td>OPEN*</td>
</tr>
<tr>
<td>JP/Municipal Ct.</td>
<td>OPEN</td>
<td>OPEN*</td>
</tr>
</tbody>
</table>

*Exceptions Apply

Who Maintains “Juvenile Files & Records”?

- Juvenile Probation Department
- Prosecutor’s Office
- Local Law Enforcement Agencies
- Department of Public Safety (JJIS)
- Local Juvenile Information Systems
- Juvenile Case Management System (JCMS)
- Federal Bureau of Investigations (FBI)
- Agency Providing __________________ Under Arrangement or Court Order
- Agency Providing __________________ Under Arrangement or Court Order
Paper and Electronic Files: TFC 58.0071

Examples...

- Forms
- Petitions & Pleadings
- ________________ Documents
- Probation Files
- Custodial Logs
- ________________ Documents
- Incident and Offense Reports
- Fingerprint Cards
- Electronically stored files, records and indexes; or
- Records from which a physical file or record could be ________________ --
  - Computer Databases & Files;
  - Microfilm;
  - Microfiche; any other
  - Electronic Storage Medium

CONFIDENTIALITY

Juveniles & Confidentiality

- TFC 58.005 – Makes juvenile ________________, rehabilitation and treatment records confidential w/ access exceptions;
- TFC 58.007 – Makes juvenile ________________ files and records confidential w/ access exceptions. Motor vehicle, justice and municipal court and sex offender registration records considered public;
- TFC 58.106 – Makes JJIS computerized database juvenile records confidential w/ access exceptions; and
- TFC 58.307 – Makes Local JIS records confidential, but allows disclosure to ________________ agencies.
Who is Entitled to Access: TFC 58.005

- Professional staff or consultants of agency or institution;
- The judge, probation officers, and professional staff/consultants of juvenile court;
- An ______________ for the child;
- A governmental agency if disclosure required by law;
- Person or entity to whom child referred to ________________________;
- TDCJ and TJPC for statistical purposes;
- Anyone else with leave of juvenile court.

Inspection of Physical Files & Records: TFC 58.0

- The judge, probation officers, and professional staff/consultants of juvenile court;
- A juvenile justice agency;
- An attorney for a party to the proceeding;
- A public or private agency or institution providing supervision or having custody of the child under juvenile court order;
- Leave of juvenile court
- Juvenile probation records under juvenile board guidelines

Key Exceptions to Confidentiality

- Exceptions to confidentiality exist
  - Statutory authorization in TFC
  - ____________________________ of juvenile court
  - School Communication, CCP Article 15.27
  - Sex Offender Registration, CCP Article 62

Unit R: Juvenile Records
Other Exceptions

- Juvenile board guidelines, TFC 58.007 (i)
- Apprehend a juvenile with an ___________ warrant or escapee, TFC 58.007(h)
- Interagency agreement w/ schools, TFC 58.0051
- Leave or permission of the juvenile court ,TFC 58.005 (a)(5); 58.007(b)(5)
- PUBLIC RECORDS
  - JP and Municipal Records, except for Orders of Nondisclosure
  - Sex Offender Registration Records

PROTECTION & RETENTION

Post-Disposition Records

Protective Status & Retention Provisions

- Sealing [FC 58.003]
- Restricted Access [FC 58.203]
- Expunction [CCP Chs. 45 and 55, et. al]
- Destruction [FC 58.006]
- Spring Cleaning Destruction [FC 58.0071]
- Records Retention Schedule [TSL PS 2-5]

Understanding the Terms

- The court-ordered sealing of juvenile records for ___________ and safekeeping. Sealed records may only be reopened in a few ___________ circumstances. [TFC 58.003]
Sealing of Files and Records: TFC 58.003

- Eligible upon finding of __________________________
- Sealing __________________ after disposition for non-felony offenses.
- Sealing __________________ for felony adjudications
- Upon __________________ - Discretionary
  - EXCEPT
    - Determinate Sentence Offenses;
    - Non-DS felony adjudications if person has been certified;
    - SXO Registration Records – while obligated to register.
- DPS no longer required to CERTIFY sealing eligibility
- ALL RECORDS sent to court, DPS has __________________________ to seal
- TJPC __________________________ not subject to SEALING ORDER.
- 2009 Legislative Changes
  - New §58.003(c-1) – Juvenile court may order felony or misdemeanor case records sealed if juvenile successfully completes a __________________________.
  - Sealing may be with or w/o a hearing.
  - New §58.003(c-2) – If records sealed, prosecutor or JPD may keep separate record of completing drug court program until 17th birthday. Then, must be sent to court for sealing.

Subsequent Access

- Juvenile can petition court to reopen, TFC 58.003(h);
- Prosecutor can apply to reopen for punishment __________________________, TFC 58.003(k); or
- DPS can request to reopen for ________________ license applicants, TFC 58.003(m)
Understanding the Terms

• The method of automatically restricting access of juvenile records only to criminal justice agencies for criminal justice purposes. Restricted access records are not destroyed or sealed but remain in place. [TFC Ch. 58, Subch. C]

Automatic Restricted Access

• System created to “automatically restrict access” to eligible juvenile records at age 21.
  o EXCEPT
    ▪ Determinate Sentence
    ▪ Adult Certification
    ▪ Sex Offender Registration
    ▪ Gang/Criminal Combination

• Court order requires agencies to allow ACCESS ONLY for investigations and criminal justice purposes.

• Advise inquirers that records “do not exist.”

• Child and attorney may have access to restricted records for Motion to Seal or Destroy.
Understanding the Terms

EXPUNION

- Expunge means to strike, blot out, obliterate.
- Expunction may be required for juvenile DNA records and subsequent criminal records;
- Juvenile-age offenders with criminal cases in the justice and municipal court may be eligible to have the conviction and related records expunged.

Expunction Provisions

Applicable in Justice & Municipal Court

- Expunction of Conviction of Minor [ABC 106.12]
- Expungement of (Tobacco) Conviction [HSC 161.255]
- Expunction of Conviction & Failure to Attend [CCP 45.054 and 45.055]
- Expunction of Certain Conviction Records of Children [CCP 45.0216]

Understanding the Terms

DESTRUCTION

- Destruction. The destruction of physical records and files, including computer entries, required by statute. TFC 58.006
- Spring Cleaning Destruction. Authorized permanent destruction of cases and/or destruction of physical records after into electronic storage media. TFC 58.0071.
Destruction

- ___________ and ___________ triggers destruction: TFC 58.0071
  - 18 years old CINS
  - 21 any del. conduct except felony
  - 31 felony adjudications
  - Addresses outdated State Library Records Retention Schedule [PS 2-5].
- No Probable Cause & Non-Suits Mandatory court order to destroy. [TFC 58.006]
- Non-Delinquency, Previously Sealed Records
  - Non-Delinquency Offenses if 5 years since 16th birthday;
  - No subsequent felony convictions;
  - Discretionary Court Order to Destroy Records [TFC 58.003 (l)]

DUTIES UPON DISCHARGE

JPD Duty to Explain...

- SEALING - On final discharge of a child or the last official action, if there is no adjudication, the child shall be given a _______________ of the right to sealing. TFC 58.003 (i)
- RESTRICTED ACCESS – At discharge, dept. must advise juvenile that _______________ must be provided prior to 21st birthday in order to receive notification.
- Provide WRITTEN EXPLANATION and a copy of the TFC Ch. 58 Subchapter C.
- TJPC Restricted Access Brochure may be one method to comply. TFC 58.208

Where to Get More Information

- Juvenile Law Section, State Bar of Texas
  - www.juvenilelaw.org
- Texas Juvenile Probation Commission
  - www.tjpc.state.tx.us
- TJPC Legal Help Desk
  - 512-424-6721, legal@tjpc.state.tx.us