

Subject	Guidance to Probation
From	Lou Serrano
To	Juvenile Probation Counties
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Good Afternoon:

The Texas Juvenile Justice Department has received numerous questions regarding ways to manage the population of detained youth while also ensuring public safety. We understand that each local community is developing its own protocols. To assist with that process, we have developed some ideas within the current statutory framework that may be useful to you. Implementation will require coordination between probation, courts, and law enforcement. We understand that many Chiefs and others within the probation field will have a substantial understanding of the references made below; however, this is to assist with others that work with the local juvenile justice system (law enforcement, school district police), and those within the community.

Over the past few days, several of the departments that operate juvenile detention facilities and have historically provided contract detention bed space to the surrounding counties have implemented policies that have restricted contract detention. There are several departments still providing this service; however, it will be very important that each department address local policies and procedures that will look at a “priority population” for detention and placement consideration. Also, departments within a region that collectively utilize a specific facility may want to develop a regional response to see which youth being considered for detention will be provided “priority consideration.” We know these are tough decisions to make, and, although many of you have already had these discussions, it is time for those of you who have not to begin to have these discussions with department staff, the courts, and law enforcement.

These are suggestions only, but we hope they will be useful to you. They do not address court proceedings, which may already be impacted by the orders issued by the Supreme Court and Texas Court of Criminal Appeals.

Coordinate with law enforcement

Ensure they are aware of legal alternatives to detention:

- Section 52.02, Family Code, allows a law-enforcement officer to take a child into custody and then release that child to a parent, guardian, custodian of the child, or other responsible adult upon that person’s promise to bring the child before the juvenile court as requested by the court – the referral to juvenile is done in paper format without taking the child to the detention center. No juvenile board action is necessary – this requires only coordination with law enforcement.

- Section 52.01, Family Code, allows a law-enforcement officer to issue a warning notice in lieu of taking a child into custody if:
 - The law-enforcement officer’s agency has issued guidelines to do so
 - The juvenile board has approved the guidelines;
 - The warning notice is authorized by the guidelines;
 - The warning notice identifies the child and the child’s alleged conduct;
 - A copy of the warning notice is sent to the child’s parent, guardian, or custodian as soon as practicable; and
 - A copy of the warning notice is filed with the law-enforcement agency and the office or official designated by the juvenile board. The warning notice may be used as the basis of further action if necessary.

- Section 52.03, Family Code, allows a law-enforcement officer to dispose of a case of a child taken into custody without referring the child to the juvenile court. Such dispositions may include a referral to an agency other than the juvenile court, a brief conference with the child and his parent, guardian, or custodian, or a referral of the child and parent/guardian/custodian for early intervention services under Section 264.302, Family Code. This option is available to law enforcement if:
 - Guidelines for such disposition have been adopted by the juvenile board;
 - The disposition is authorized by the guidelines; and
 - The officer makes a written report of the officer's disposition to the law-enforcement agency, identifying the child and specifying the grounds for believing that the taking into custody was authorized.

Carefully Evaluate the Need for Detention

Once children are brought to detention, Section 53.02, Family Code, mandates that children taken into custody may be detained only if one of the following criteria is met:

- the child is likely to abscond or be removed from the jurisdiction of the court;
- suitable supervision, care, or protection for the child is not being provided by a parent, guardian, custodian, or other person;
- the child has no parent, guardian, custodian, or other person able to return the child to the court when required;
- the child may be dangerous to himself or herself or the child may threaten the safety of the public if released;
- the child has previously been found to be a delinquent child or has previously been convicted of a penal offense punishable by a term in jail or prison and is likely to commit an offense if released, or
- detention is required because the child used, possessed, or exhibited a firearm in the commission of an alleged act of delinquent conduct.

The only instance in which the conduct charged may mandate detention is when the child used, possessed, or exhibited a firearm in the commission of an alleged act of delinquent conduct.

Jurisdictions are not legally permitted to mandate detention for any other class of offense (for example: it is not permissible to mandate the detention of "all children accused of a Class A misdemeanor or higher").

It is important to ensure that the person responsible for intake thoroughly vets each child so that if none of the criteria to detain is present, the child is released. Jurisdictions may wish to consider ways to conduct this review prior to introducing the child to the facility. Ideas include:

- A phone consultation with the law enforcement officer prior to law enforcement bringing the child to the facility; if the decision is made that criteria is not present, the child should be released to a parent and a paper referral made.
- Creating a secure area with limited space and access for the child to be in while the intake decision is made. This area should be cleaned after the assessment.
- Creating a secondary screening process in the event the initial intake individual determines detention criteria exist, such as an escalation to a supervisor to determine if steps short of detention are appropriate for the situation.

Determine if Detained Youth Can Be Released

Apart from the initial mandatory detention when a firearm is involved, detention is never mandated. Local officials may wish to conduct a routine review of youth in custody to determine if youth can be released. There is no legal requirement to wait until the next detention hearing to release; jurisdictions can develop or update their current processes to handle situations in which detention was warranted at the hearing but release may be appropriate before the next hearing.

Post-Adjudication Population

From a statutory standpoint, there is no prohibition on reducing the length of time a juvenile is kept in placement. As the length of the placement is a condition of probation ordered by the court, a modification under Section 54.05, Family Code, is the appropriate legal vehicle.

Any of the following may petition for a modification and the court is required to set a hearing to

consider the request: the state, a probation officer, the child and his parent, guardian, guardian ad litem, or attorney, or the court itself. However, except in instances in which the disposition is commitment to TJJJ or placement in a post-adjudication secure correctional facility for more than 30 days, the hearing may be waived by the child and his parent, guardian, guardian ad litem, or attorney in accordance with Section 51.09.

Given this flexibility, it is possible from a legal standpoint to efficiently get modified court orders reducing the time in placement in order to provide for release. Other conditions of probation can be added or modified as necessary to ensure public safety and to provide appropriate supports if releasing youth early.

If you have any questions or concerns, please know that we are here to assist. There have been many questions already submitted to TJJJ, and we will do everything we can to respond in a timely manner. Along with this, please share with each other on ways your community has addressed these issues. Together we can continue our work to maintain public safety while dealing with the current situation.

Appreciate all of you as we continue to work through this.

Louis Serrano

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