

LEGISLATIVE UPDATES



DATA COORDINATOR'S CONFERENCE
NOVEMBER 2015



TEXAS
JUVENILE JUSTICE
DEPARTMENT

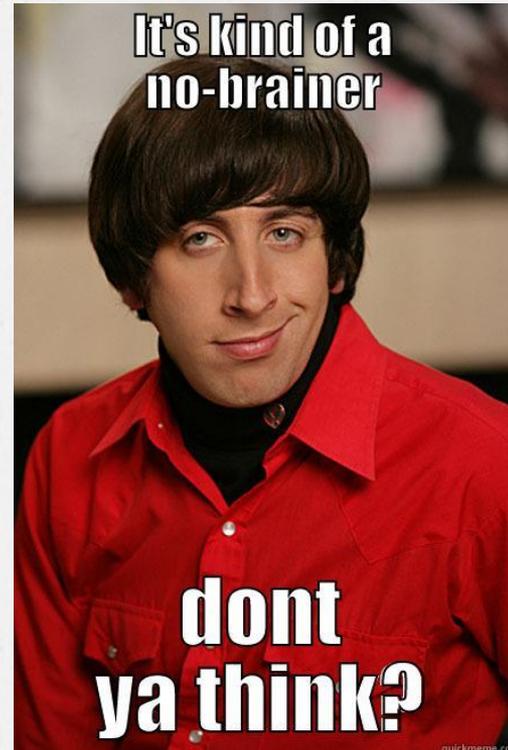
IT BEGINS...

- o Frequent Media Attention
 - o Guns
 - o Marijuana
 - o Marriage
 - o Ethics and Contract Reform



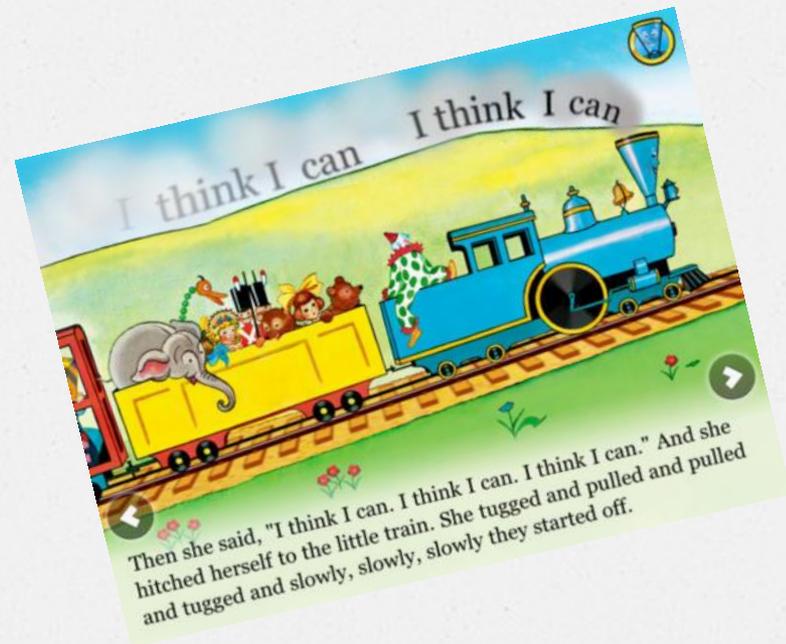
Juvenile Justice Topics

- Decriminalize Truant Conduct
- Juvenile Justice System Continuing Reform
- Juvenile Omnibus Bill
- Juvenile Records Bills



Juvenile Justice Topics

- o Raise the Age
- o TJJD Ombudsman Authority





Apparent Casualties

- o HB 1205: Raise the Age
- o HB 2616: Juvenile Omnibus Bill
- o HB 3277: Ombudsman Extension
- o SB 106: Decriminalizing Truancy
- o SB 1630: Regionalization

“I’m Not Dead [Yet]”

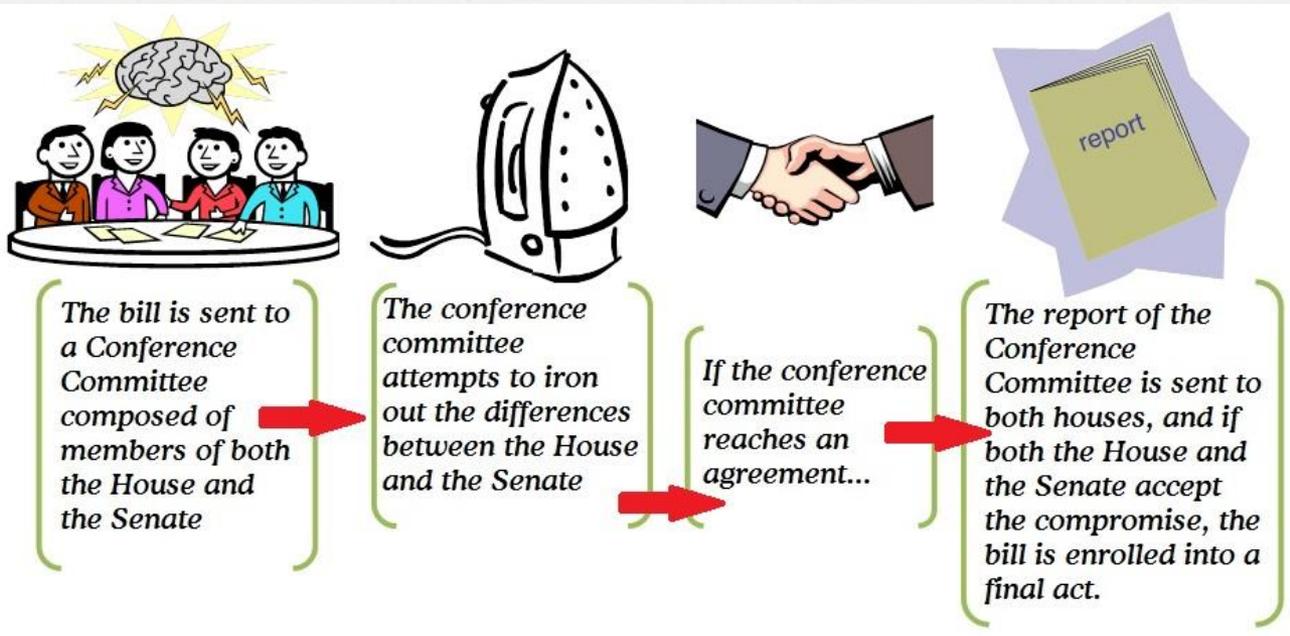


O' Christmas Tree

- o SB 1630 – Got out of Committee
- o Was amended on House Floor to:
 - o Raise the Age of Criminal Jurisdiction to 18
 - o Expand the Authority of the Ombudsman



SB 1630 Conference Committee





I'LL BE BACK.



SOON.

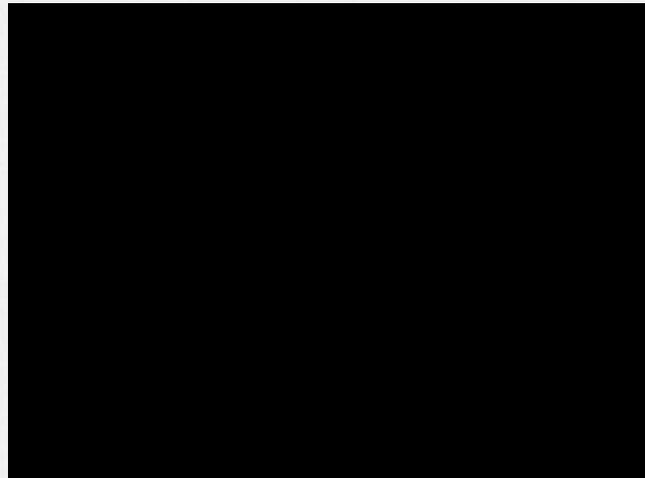
memegenerator.net

SB 106 - Truancy

- Substituted into both HB 2398 and HB 1490



HB 2616 – All Dead



Juvenile Justice Related Legislation

o SB 107

o SB 108

o SB 183

o SB 409

o SB 888

o SB 1149

o SB1630

o SB 1707

o HB 257

o HB 263

o HB 431

o HB 642

o HB 839

o HB 1144

o HB 1311

o HB 1376

o HB 1549

o HB 1595

o HB 2398

o HB 4003

Regionalization



What It is NOT

- o Not a plan to build new facilities
- o Not a mechanism for counties to commit juveniles to themselves

The Plan

o GOALS

- o Keep juveniles closer to home
- o Reduce commitments to TJJD

o COMPONENTS

- o Identify post-adjudication space
- o Ensure research-based programs available
- o Reimburse counties at a daily rate for diverted kids

SB 1630

Effective: 9/1/15

Diversion

- o FY 16: Divert at least 30 juveniles
- o FY 17: Divert at least 150 juveniles



SB 1630

Effective: 9/1/15

Special Commitment Finding

- o For offenses committed 9/1/17 or later
- o Indeterminate commitment to TJJD only if court finds
 - o Child has behavioral health or other special needs
 - o Needs cannot be met with resources available in community

SB 1630

Effective: 9/1/15

Special Commitment Finding

- o Court should consider
 - o Findings of validated risk and needs assessment
 - o TJJD may only provide or approve validated risk and needs assessment tools or processes
 - o Findings of any other appropriate professional assessment available to court

SB 1630

Effective: 9/1/15

Office of Independent Ombudsman

- o Access to juveniles in
 - o post-adjudication secure correctional facilities
 - o any residential facility that accepts juvenile on probation per court order
- o Investigation of rights violations
- o Must report findings to Chief and Juv. Board

SB 1630

Effective: 9/1/15

Juvenile Records Legislation



Juvenile Records Advisory Committee

- o Committee to recommend changes to Chapter 58, Family Code
- o TJJD appointed members at November Board meeting
- o First meeting in December

HB 431

Effective 5/28/15

Automatic Sealing

- o Old Law - Juvenile through attorney required to file application for sealing
- o New Law – no application filed
- o Criteria for Sealing Unchanged



SB 1707/HB 263
Effective: 9/1/15

Criteria – Misd/CINS/No Adjudication

- o Court required to order sealing if:
 - o Two years have passed since discharge (if adj.) or last official action (no adj.)
 - o No pending charges
 - o No adult conviction for felony or moral turpitude misdemeanor
- o Court has discretion to seal prior to 2 years

Criteria – Felony Adjudication

- o Court has discretion to seal if:
 - o 19 years of age
 - o Never certified as an adult
 - o No pending charges
 - o No adult felony conviction
 - o Records haven't been used in adult punishment proceeding

Issues with Determining Eligibility

- o When to run checks
 - o How do you know when 2 years is up?
 - o How do you know when 19?
 - o Law says to give prosecutor notice BEFORE eligible; do you have to run twice then?
- o Personnel
 - o How many staff to review every juvenile's CCH, not just those that apply for sealing?
- o Multiple checks
 - o If only reason ineligible is pending charge, how frequently do you re-run to check for eligibility

Solution

- o DPS will send notice that it appears to them someone is eligible (expected to begin 11/1/15)
- o Court will need to review for CINS because not reported to DPS
- o Be aware that any non-reported information may impact eligibility

Unresolved Issue

- If only charge was CINS, won't get notice from DPS

Changes to Hearing

- o Old Law

- o Hearing required unless waived by prosecutor, court, child

- o New Law

- o Must give prosecutor notice prior to eligibility
- o No hearing unless prosecutor requests one

Issues with Hearing Notice

- o Won't be able to notify prosecutor *prior* to eligibility
- o Prosecutor no longer entitled to notice of hearing
 - o Recommend they still get notice
- o Juvenile is entitled to notice; no application means possibly no current address

Early Sealing

- o Elimination of application effectively eliminates ability to get early discretionary sealing for CINS/misdemeanors/no adjudications
 - o Consider allowing application if person wants to request early sealing

Records eligible prior to 9/1/15

- o Not entitled to automatic sealing
- o Maintain old law process for them

Sex Offender

- Not eligible until duty to register expires

Questions?

IF YOU ASK ME A
QUESTION I DON'T
KNOW, I'M NOT
GOING TO ANSWER
IT.

Sharing Info with CPS

- On request of CPS, must share probation terms of child under CPS conservatorship



SB 206

Effective: 9/1/15

CPS Sharing

- o New 58.0053 but was already required by 58.0052, which requires juvenile service providers to share information regarding multi-system youth for purposes of:
 - o identifying a multi-system youth;
 - o coordinating and monitoring care for a multi-system youth; and
 - o improving the quality of juvenile services provided to a multi-system youth

Victim Information Redaction

- o Prior to disclosure of juvenile records
- o Must redact personally identifiable information of victim under 18
- o Exceptions
 - o Law enforcement purposes
 - o Agency providing services to victim
 - o JCMS

HB 4003

Effective: 9/1/15

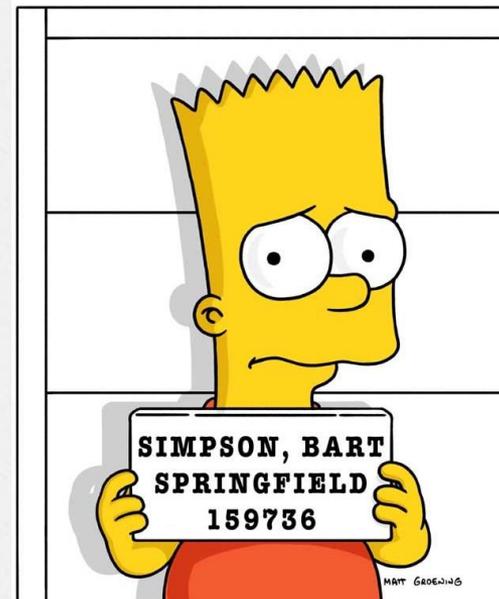
Victim Information Redaction

- o What about defense attorney?
 - o Constitutional rights of a defendant require sharing information with defense attorney
 - o Perhaps included as “law enforcement purposes?”



“Mugshot” Bill

- o Upon notice that information is about juvenile record or criminal record of child, must remove
- o Can repost if determine not information of a child
- o Creates cause of action



HB 1491

Effective: 9/1/15

Juvenile Probation Legislation

"I do this job for the money."

Said no probation officer
ever.



someecards
user card

Personal Information

- o Personal information not subject to disclosure in Public Information Request
- o Can apply to protect information in Tax Records
- o Applies to current and former:
 - o TJJJ employees
 - o Certified JPOs and JSOs
 - o All JPD employees

HB 1311

Effective: 6/16/15

Improper Sexual Activity

- Extends elements of “employing, authorizing, or inducing individual to engage in sexual conduct or sexual performance” to include kids in all juvenile facilities, not just TJJD

SB 183

Effective: 9/1/15

Improper Sexual Activity

- Extends higher level offense (F2) to all juvenile facilities, not just those primarily operated with state funds

SB 183

Effective: 9/1/15

Improper Sexual Activity

- Extends offense of engaging in sexual contact with person under supervision but not in custody to include employees of all juvenile facilities, not just probation departments

SB 183

Effective: 9/1/15

Juvenile Probation Officer CHL

- Sworn statement of TCOLE officer re:
handgun proficiency can be used to
establish proficiency for CHL
- Fee reduced to \$25

HB 1376

Effective: 9/1/15

School-Related Legislation



Campus Behavior Coordinator



**Campus Behavior
Coordinator's**

SB 107

Effective: 6/20/15

Weapons At School – Mandatory Expulsion

- o No more “local policy” definition of knife
- o Includes only conduct that meets elements of Unlawfully Carrying Weapon (46.02 PC) or Prohibited Weapons (46.05 PC)



SB 107

Effective: 6/20/15

Zero Tolerance

- o Prior to suspension, expulsion, or placement in DAEP or JJAEP
- o CBC or school board must consider
 - o Self-defense
 - o Intent or lack thereof
 - o Disciplinary history
 - o Disability impacting ability to appreciate wrongfulness

SB 107

Effective: 6/20/15

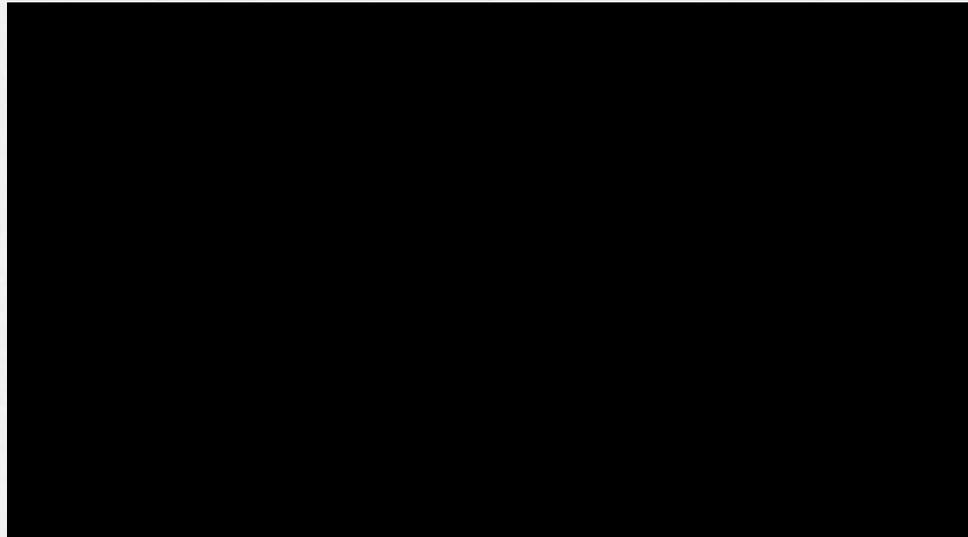
School Offenses

- o Child – age raised; at least 10 and not yet 18
- o No citations may be issued for school offenses committed by child
- o School can refer child to Teen Court program when it files complaint against the child

SB 108

Effective: 9/1/15

Truant Conduct



Truant Conduct

- o Schools must use more interventions
- o Referral to court is last resort; must prove interventions used

HB 2398

Effective: 9/1/15

Failure to Attend Repealed

- o Section 25.094, Education Code repealed
- o Student at least 12 and not yet 18
- o In same school year, absent on
 - o 3 or more days (or parts of days) in 4 week period or
 - o 10 or more days (or parts of days) in 6-month period
- o Class C misdemeanor; justice/municipal court

Truancy Repealed

- o Section 51.03(b)(2)
- o Student at least 10 and not yet 18
- o In same school year, absent on
 - o 3 or more days or parts of days in 4 week period or
 - o 10 or more days (or parts of days) in 6 month period
- o Conduct Indicating a Need for Supervision (CINS); juvenile court
- o All other Family Code statutes related to truancy repealed

Truant Conduct Created

- o Section 65.003, Family Code
- o Student at least 12 and not yet 19
 - o 10 and 11 year olds can't be charged anymore
- o Civil Violation

Truant Conduct

- o 10 or more absences in 6 months = truant conduct
- o 3 or more absences in 4 week period no longer an offense





I'M GOING TO
DISNEY WORLD

©DISNEY

Parent Contributing

- o Still an offense
- o Penalty changed
 - o 1st offense up to \$100
 - o 2nd offense up to \$200
 - o 3rd offense up to \$300
 - o 4th offense up to \$400
 - o 5th and subsequent offense up to \$500

School Changes

- o Schools must implement additional measures to address attendance issues
- o Mandatory referral for 10 absences except can delay or not refer if:
 - o truancy prevention measures are working and
 - o not referring is in child's best interest

Truancy Court

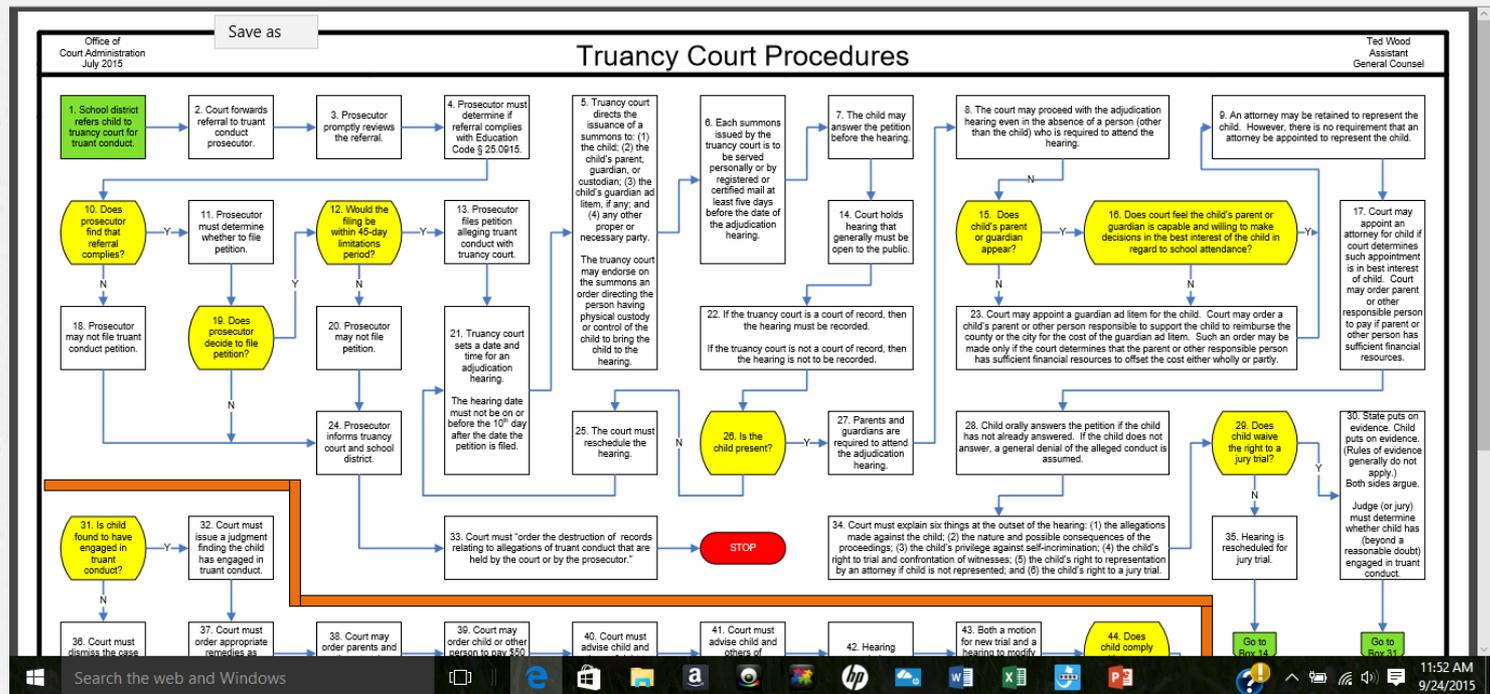
- o Courts that had FTA jurisdiction now have truant conduct jurisdiction
- o Procedures governed by Chapter 65, Family Code (new Title 3A)
 - o “The purpose of this chapter is to encourage school attendance by creating simple civil judicial procedures through which children are held accountable for excessive school absences” Sec. 65.001(b)

Truancy Court Procedures

Mail - Kac Outlook.c Texas Con FAMILY Ct EDUCATIC Texas Leg 84(R) HB : You need New tab See the St Truancy-C Truan x + -

file:///C:/Users/Kaci/Documents/Pictures/Truancy-Court-Procedures.pdf

Find on page refer No results < > Options x



WHAT NEED YOU



TO KNOW, HMM?

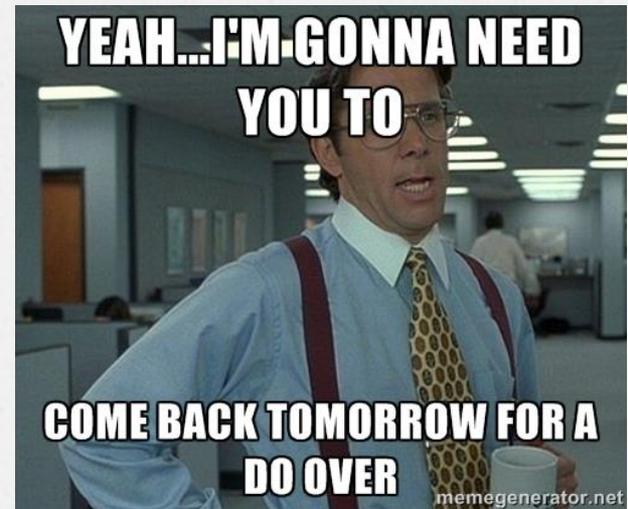
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Truancy Court Procedures

- o Allowed to have attorney
- o Have same rights as in juvenile court
- o Jury trial unless waived – 6 person
- o Courts must have truant conduct prosecutors

Juvenile Court Procedures

- o Appeal to Juvenile Court
- o De Novo Hearing (“Do Over”)
- o No Right to Attorney
- o Rule 506 of TRCP applies to appeal
 - o Same as appeal from JP/Muni to county court
 - o No appeal bond



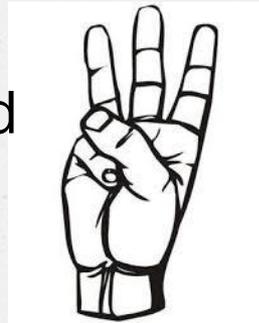
Juvenile Court Appeal

- Can appeal juvenile court finding same way as any juvenile appeal (Ch. 56, FC)



Contempt Referrals

- o After two findings of contempt (direct or indirect), third allegation can be referred to juvenile probation department
- o Issues
 - o If truancy court adjudicates the contempt, can't refer (same as now)
 - o Direct contempt – is not defined as delinquent conduct or CINS; does juvenile court have jurisdiction?



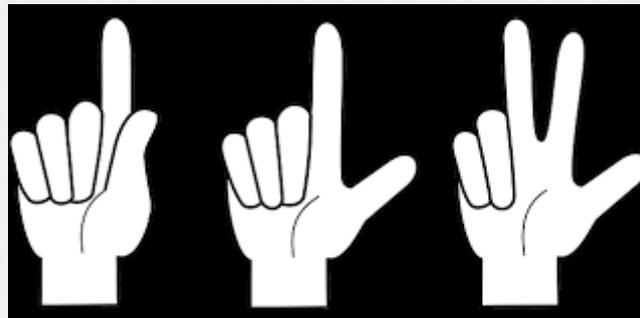
AG Opinion Request

RQ-0046

- o Statutory Language:
 - o If a child (under 17) fails to obey an order issued by a truancy court or a child is in direct contempt of court and the child has failed to obey an order or has been found in direct contempt on two or more previous occasions...

AG Opinion Request RQ-0046

- o Alternative Interpretation One:
 - o Can refer on first indirect contempt
 - o Can refer for direct contempt if:
 - o One prior indirect contempt or
 - o Two prior direct contempt findings



AG Opinion Request RQ-0046

- o Alternative Interpretation Two:
 - o Can refer for direct or indirect contempt
 - o If one prior indirect contempt or
 - o If two prior direct contempt findings



Contempt Process

- o On referral, truancy court to provide:
 - o Documentation of truancy prevention measures used by school
 - o Documentation of all truancy orders for all prior truancy referrals, including:
 - o Court remedies and documentation of failure to comply with court orders demonstrating all interventions exhausted by court or
 - o Documentation describing direct contempt

Contempt Process

- o After reviewing information, juvenile probation department may:
 - o Offer further remedies related to the local plan for truancy intervention strategies or
 - o Refer the child to juvenile court for a hearing to be conducted under Section 65.252

Section 65.252 Hearing

- o Juvenile Court Prosecutor to determine if probable cause for contempt exists
- o If PC exists, prosecutor can request adjudication
- o Juvenile court hearing must be held no later than 20th day after court receives request for adjudication

Section 65.252 Hearing

- o If court finds child engaged in indirect or direct contempt, court shall:
 - o Enter order requiring child to comply with truancy court orders and send order to truancy court w/in 5 days
 - o Admonish child, orally and in writing, of consequences of subsequent referral, including:
 - o Possible detention hearing
 - o Possible charge of delinquent conduct for indirect or direct contempt

AG Opinion Request

RQ-0046

- o Section 65.252(d): “This section does not limit the discretion of the juvenile court or juvenile prosecutor to prosecute child for conduct under 51.03, Family Code.”
- o Question: Does first referral for contempt have to be handled under 65.252 or can every referral result in delinquent conduct petition?

One View

- o Indirect contempt is defined as delinquent conduct; direct contempt is neither DC nor CINS
- o Only way to get jurisdiction over child is through service of summons with petition attached
- o Petition must allege DC or CINS
- o So, only indirect contempt can be charged in juvenile court and must be alleged as delinquent conduct
- o 65.252 is a disposition option, not a charging option

Status Offense

- o CINS Truancy deleted from list of status offenses in 51.02(15)
- o Still a status offense



Detention

- o JP/Muni cannot order detention for contempt
- o Can child be detained for delinquent conduct contempt referral?
 - o No changes to detention statutes
 - o Detention criteria must be met
 - o Status Offense



Expunctions

- New 65.251 requires JP/Muni courts to order expunctions of convictions or dismissals under former 25.094 (Failure to Attend School)

Expunctions

- o Juvenile probation departments are receiving expunction orders
- o Submitted Request for AG Opinion, RQ-0057

Restitution Change

- o FC 54.041(g) repealed
 - o Requires court to waive parent restitution if child's conduct continues despite parent's reasonable good faith efforts to stop it
- o Repeal is likely a mistake
 - o Consider continuing the practice

QUESTIONS?

Why do we press harder on the remote when the batteries are dead?



Miscellaneous Topics



<http://www.click2houston.com/news/22yearold-mans-murder-conviction-overturned/30520298>

Appeals – Certification

- o Cameron Moon Case – Houston
- o Holding:
 - o Offense alone does not justify certification
 - o Court must conduct individualized assessment of statutory factors
 - o Court must put process and rationale in record

Appeals – Certification

- o Child and Prosecution can appeal certification decision immediately
- o Appeal has precedence; Supreme Court to adopt rules to expedite
- o Appeal does not stay adult criminal proceedings

SB 888

Effective: 9/1/15

Drug-Related Offense Awareness Program

- Juvenile court can order child adjudicated for or receiving deferred prosecution for drug possession offenses to attend a drug education program approved by DSHS
- Parent to pay for course unless court finds indigent
- Court must allow parent to pay in installments

HB 642

Effective: 9/1/15

Medicaid Coverage

- o HHSC to suspend rather than terminate child health plan benefits when placed in juvenile facility
- o HHSC to establish way for juvenile facilities to determine if a child is or was enrolled in the child health plan

HB 839

Effective: 6/18/15

Medicaid Coverage

- If juvenile facility chooses to notify HHSC about *placement* of child, must do so ASAP and within 30 days of placement

HB 839

Effective: 6/18/15

Medicaid Coverage

- o If juvenile facility chooses to notify HHSC about *release*, must do so no later than 48 hours after release
- o No later than 48 hours after HHSC notified of release, shall reinstate eligibility
- o Written notice to guardian; include HHSC contact info

HB 839

Effective: 6/18/15

TJJD – Name Change

- o TJPC and TYC replaced with TJJD in all statutes



HB 1549

Effective: 9/1/15

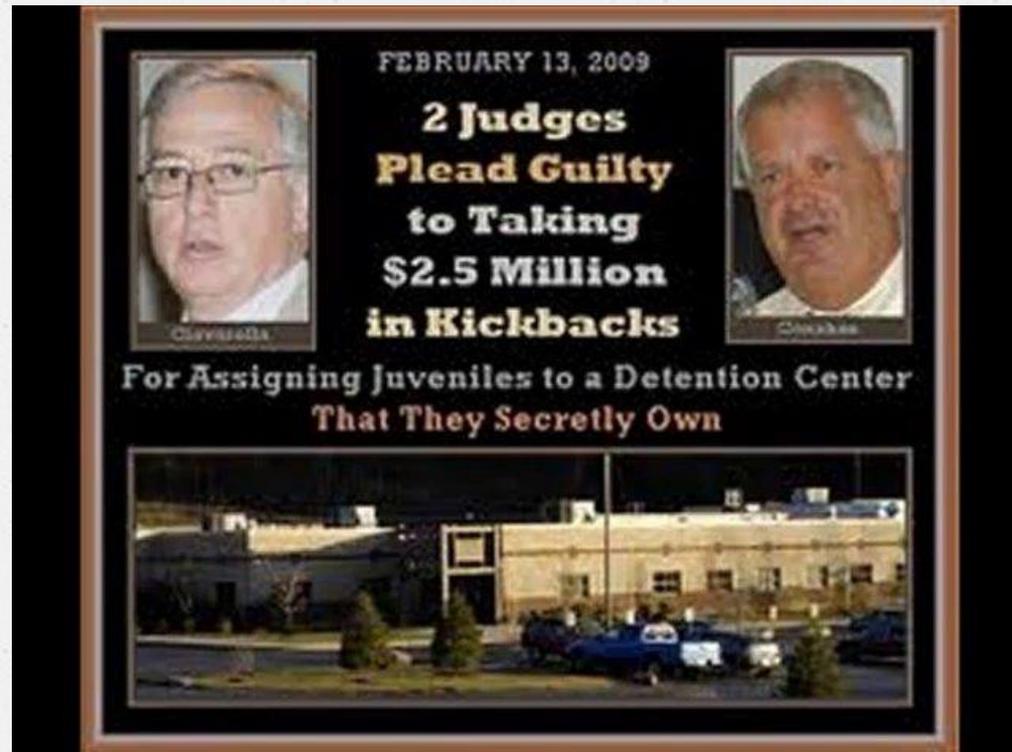
Travis County Commitment Program

- Ensures laws applicable to juveniles committed to TJJD also apply to those committed to Travis County

SB 1149

Effective: 9/1/15

Judges – Interest in Private Facilities



Judges – Interest in Private Facilities

- o At time judge takes office
- o No significant interest in business that owns, manages, or operates
- o Significant interest
 - o Voting stock or share
 - o Any direct investment
 - o Receives any money

HB 257

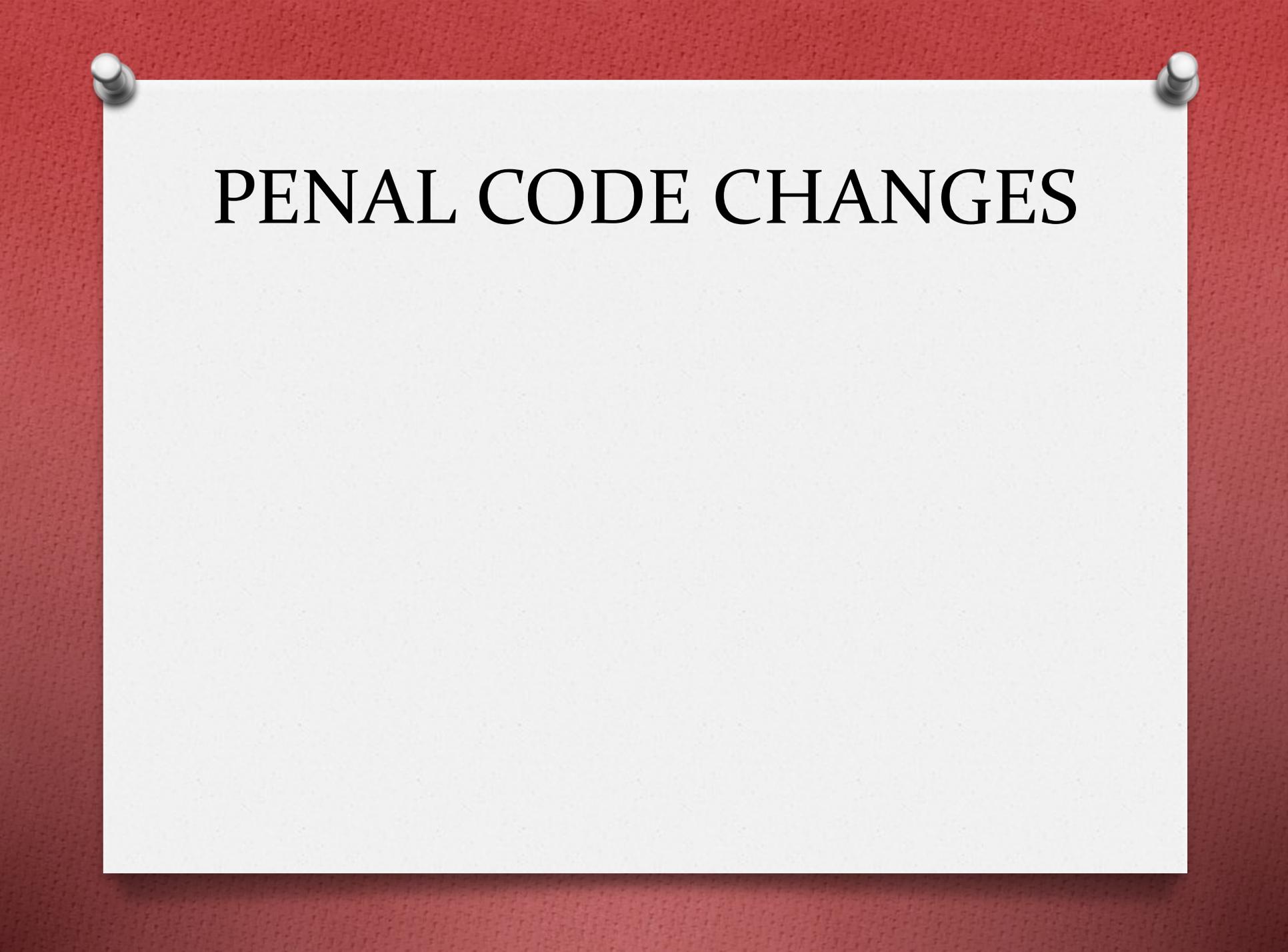
Effective: 1/1/17

CCP 42.12 – Non-substantive Revision



- NO MORE 3(G)
OFFENSES
- Now 42A.054
Offenses

HB 2299
Effective: 1/1/17



PENAL CODE CHANGES

Property Crime Thresholds



Pecuniary Loss Thresholds Increased

- o Theft - §31.03
- o Graffiti - §28.08
- o Theft of Service - §31.04
- o Criminal Mischief - §28.03
- o Organized Retail Theft - §31.16
- o Trademark Counterfeiting - §32.23
- o Abuse of Official Capacity - §39.02
- o Interference with Railroad Property - §28.07

HB 1396

Effective: 9/1/15

Thresholds - Generally

New Levels

- o Class C < \$100
- o Class B \geq \$100; < \$750
- o Class A \geq \$750; < \$2,500
- o SJF \geq \$2,500; < \$30,000
- o F3 \geq \$30,000; < \$150,000
- o F2 \geq \$150,000; < \$300,000
- o F1 \geq \$300,000

Prior Levels

- o Class C < \$50
- o Class B \geq \$50; < \$500
- o Class A \geq \$500; < 1,500
- ~~o SJF \geq \$1500; < \$20,000~~
- ~~o F3 \geq \$20,000; < \$100,000~~
- ~~o F2 \geq \$100,000; < \$200,000~~
- ~~o F1 \geq \$200,000~~

Issues

- o Creates Class C misdemeanors that didn't previously exist
 - o Graffiti; Organized Retail Theft
- o Creates misdemeanors that used to be felonies, regardless of loss value
 - o Place of Worship; Public School

INVASIVE VISUAL RECORDING

§21.15 PC (Amends)

- o without consent and with intent to invade privacy
- o record, broadcast, or transmit by photograph/video/electronic means
- o visual image of an intimate area of another person if the other person has a reasonable expectation that the intimate area is not subject to public view; record, broadcast, or transmit by photograph/video/electronic means a visual image of another in a bathroom or changing room;

OR

- o knowing the character and content, promotes material described above

SB 1317

VOYEURISM

§ 21.16 PC (New)

- Intent to arouse or gratify the sexual desire of actor
- Observes another person without consent
- Dwelling/Structure w/ reasonable expectation of privacy
- **Class C** misdemeanor
- **Class B** misdemeanor if $\geq 2x$ convictions
- **SJF** if child <14 years of age



HB 207

Unlawful Disclosure Of Intimate Visual Material



SB 1135

UNLAWFUL DISCLOSURE

§ 21.16 PC (New)

- o Discloses explicit visual material depicting person,
- o Captured with consent at time but reasonably expected to be private,
- o Later disseminated publically without consent of person captured,
- o Causes harm, **AND**
- o Reveals identity in any manner, including as a result of a 3rd party **OR**
- o Threaten to disclose above explicit visual material depicting a person, Without consent, **AND**
- o To obtain benefit in return or in connection.

UNLAWFUL DISCLOSURE

OR

- o Knowing character and content,
- o Promote above explicit visual material depicting person,
- o Online or other publication forum which they own or operate.

DEFINITION OF DISABLED INDIVIDUAL

- o Agg Sex Assault enhancements
 - o Victim under 14
 - o “Disabled individual” as defined in 22.04 (person over 14)
- o Loophole: 14 year old disabled person isn't covered
- o **Now:** "Disabled individual" means a person over 13

E-CIGARETTES

- Minor prohibited from possessing E-Cigarettes
- E-Cigarettes prohibited in same places as tobacco

Any Questions?



Contact Information

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