



[Processing Juveniles in Municipal Court]



[Objectives]

- Jurisdiction
- Taking juveniles into custody
- Chapter 45 of the Code of Criminal Procedure
- Dispositional powers and procedures
- Confidentiality in Juvenile Records
- Expunctions
- School attendance
- Alcohol violations
- Tobacco violations

[Jurisdiction in Juvenile Cases]



[Juveniles in Municipal Courts]

- In 2008, there were 321,669 juvenile cases filed in municipal courts alone
- In 2009, there were 304,023 juvenile cases filed
- Over 100,000 more juvenile cases were filed in justice courts
 - 40,000 to 50,000 in juvenile courts
 - We see more juveniles in municipal and justice courts than in all other courts combined.

[Jurisdiction in Juvenile Cases]

- "Fine only" misdemeanors
- Definition: an offense that is punishable by fine and such sanctions, if any, as authorized by statute not consisting of confinement in jail or imprisonment

[Jurisdiction in Juvenile Cases]

- Primary source of juvenile related criminal violations
- Alcoholic Beverage Code
 - Education Code
 - Health and Safety Code
 - Penal Code
 - Transportation Code
 - Family Code (new truancy statute)

[Jurisdiction in Juvenile Cases]

"Child", "Minor", "Juvenile"

Terms defined by the various codes

- Family Code defines child as age 10 to 16
- Education Code defines child as age 6 (or younger than 6 if child has previously been enrolled in 1st grade) to 18
- Transportation Code defines minor as under the age of 17
- Alcoholic Beverage Code defines minor as under the age of 21
- Health and Safety Code defines minor as under the age of 18

[Jurisdiction in Juvenile Cases]

Waiver of jurisdiction- Transfer to Juvenile Court

- Discretionary waiver
 - Municipal court may waive jurisdiction and transfer any juvenile (under 17) case to juvenile court
 - Exceptions: Transportation Code offenses and tobacco offenses

[Jurisdiction in Juvenile Cases]

- Mandatory waiver 51.08 Family Code
 - No mandatory waiver if the court has a Juvenile Case Manager
 - No Juvenile Case Manager
Court must transfer if juvenile has been previously convicted of
 - Two or more prior fine-only offenses other than traffic, public intoxication, or tobacco
 - Two or more violations of a penal ordinance of a political subdivision other than a traffic offense
 - One or more of each of the types of misdemeanors described above

[Jurisdiction in Juvenile Cases]

- Juvenile Case Manager
 - Requires written consent of city council
 - Provides services in cases before the court dealing with juvenile offenders
 - Can provide the judge with local program availability and information
 - Can monitor compliance with court orders to reduce the number of callback hearings
 - Allows the court to retain jurisdiction of third or fourth offenders
 - Two or more courts may jointly employ a case manager
 - May apply to the criminal justice division of the governor's office for reimbursement of the costs

[Jurisdiction in Juvenile Cases]

- CCP ART. 45.056
Allows a municipality by ordinance to collect a \$5 court cost on all convictions to be placed in a "Juvenile Case Manager Fund" to be used exclusively for salary and benefits of a Juvenile Case Manager.

[Jurisdiction in Juvenile Cases]

- Contempt of a Municipal Court order
 - Refer to juvenile court
 - Retain jurisdiction and after a hearing hold in contempt
 - Fine up to \$500
 - Suspend or deny drivers license until full compliance
 - Must notify DPS of compliance

[Taking Juveniles into Custody]



[Taking juveniles into custody]

- Citation vs. Arrest
 - Officer can arrest a juvenile on a fine-only offense (except Education Code offense)
 - Officer can allow the juvenile to sign a promise to appear (except EC offense)
 - Juvenile can be charged with Failure to Appear or Violate Written Promise to Appear

[Taking Juveniles into Custody]

- Processing
 - Can a Municipal Court Judge issue a warrant for the arrest of a juvenile?
 - May still issue Order of Non-Secured Custody (Juvenile Warrant).
 - No arrest warrant for Education Code offense if committed when the person was under 17. SB 114, EC §37.085

[Taking Juveniles into Custody]

- All juveniles must enter a plea in court
- Not all appear voluntarily
- You can issue a warrant to arrest a juvenile (EC 37.085 notwithstanding)
 - Release to parent
 - Take directly before the court
 - Place of non-secure custody (up to 6 hours)

[Taking Juveniles into Custody]

- Place of Non-secure Custody
 - Defined as unlocked multipurpose area
 - Lobby, office, or interrogation room
 - No secure detention area
 - Designated by head of law enforcement with custody
 - No handcuffs while in area
 - Must be under continuous visual observation
 - Hold must not last longer than necessary to take before judge or release to parent
 - No hold longer than 6 hours
 - No fingerprints or photographs

[Taking Juveniles into Custody]

- Transfers and referral to juvenile court
- May be taken into custody or detained in a juvenile detention facility
 - Transfer- jurisdiction waived and case sent to juvenile court- mandatory or discretionary
 - Referral- contempt of a municipal court order
 - Know your County procedures – Paper Referrals

[Taking Juveniles into Custody]

Age 17 at time of offense

- Treat as an adult for arrest purposes

[Taking Juveniles into Custody]

- Juvenile at time of offense – Now 17
JNA – Juvenile Now Adult
 - Can you issue an “Adult Alias” warrant?
No, only a juvenile warrant
 - How can you compel an appearance if the juvenile warrant does not work?

[Taking Juveniles into Custody]

- Begins with the Citation
 - Citation must contain obligation to provide current address language CCP §45.057(h)

[Taking Juveniles into Custody]

A child and parent required to appear before the court have an obligation to provide the court in writing with the current address and residence of the child. The obligation does not end when the child reaches age 17. On or before the seventh day after the date the child or parent changes residence, the child or parent shall notify the court of the current address in the manner directed by the court. A violation of this subsection may result in arrest and is a Class C misdemeanor. The obligation to provide notice terminates on discharge and satisfaction of the judgment or final disposition not requiring a finding of guilt.

[Taking Juveniles into Custody]

- o Juvenile "No Shows" for court
- o Non-custodial (juvenile) warrant
- o Juvenile turns 17 years old becomes a JNA (Juvenile Now Adult)
- o Mail notice of continuing obligation to appear to JNA at last known address and docket for a hearing

[Taking Juveniles into Custody]

Required Warning
"Warning: Court records reveal that before your 17th birthday you were accused of a criminal offense and have failed to make an appearance or enter a plea in this matter. As an adult, you are notified that you have a continuing obligation to appear in this case. Failure to appear as required by this notice may be an additional criminal offense and result in a warrant being issued for your arrest."

[Taking Juveniles into Custody]

- o If JNA appears – Take a plea on the charge
- o If JNA “No Shows” – New charge under CCP §45.057(h)
- o Recall “juvenile” warrant
- o Issue warrant on this new charge – Defendant is an adult so issue Adult “Alias” Warrant
- o JNA arrested
- o JNA being held only on Adult FTA charge but you can take pleas on underlying juvenile charge

[Taking Juveniles into Custody]

- Can you issue an Adult Capias Pro Fine Warrant?
 - o Yes, eventually, but you must follow procedure
- Juvenile at time of offense
 - o Juvenile appears
 - o Enters plea and judgment entered
 - o Juvenile defaults

[Taking Juveniles into Custody]

- o First must pursue juvenile contempt (CCP §45.050) to compel compliance
 - Either
 - Refer to juvenile court for contempt if defendant is still a juvenile at time of default
 - Find in contempt
- o Juvenile turns 17 – becomes JNA
- o Prior to signing Adult Capias Pro Fine Warrant – must make special findings

[Taking Juveniles into Custody]

- The Defendant is 17 years of age or older
- Warrant is justified based on sophistication and maturity level of defendant
- Warrant is justified by the criminal record and history of the individual
- There is no reasonable likelihood of bringing about the discharge of the judgment through the use of procedures and services currently available to the court
- The court has proceeded under Article 45.050 to compel the individual to discharge the judgment
- If answer "yes" to all
- Sign Adult Capias Pro Fine Warrant

[Chapter 45 CCP]

- Answers to questions of procedure
- Forms of deferrals
 - Deferred Disposition
 - Driver Safety Course
 - Teen court

[Chapter 45 CCP]

Deferred Disposition

- Defendant is under age 25
- Charge is a moving traffic violation
- Judge shall order as a condition that defendant complete a DSC course
- Defendant's holding a provisional license shall be ordered as a condition that they complete the Department of Public Safety Drivers License Application Examination (even if they have already take the exam)

[Chapter 45 CCP]

Teen court

- Judge in municipal court takes the plea of guilty or no contest
- Juvenile requests teen court
- Determine whether the case meets teen court requirements for referral
- Collect court costs (may waive)
- \$10 fee to court and \$10 fee to teen court (optional)
- Before 180th day or within 90 days of teen court hearing juvenile must provide proof of completion
- Hearing - for failing to complete teen court requirement before judgment is entered

[Chapter 45 CCP]

Community Service

- Same rules apply as for adults
- \$50 for 8 hours work
- Can pay balance at any time
- Over 16 hours a week requires finding of no hardship
- Only at a governmental entity or non-profit organization
- Can waive payment of fine and costs if you find community service would be an undue hardship
- Juveniles only- Default
 - Report failure to pay fine to DPS
 - Contempt

[General Procedures]



[General Procedures]

Parent's appearance required

- All juvenile (under 17) cases, and all FTAS cases including 17.
- Court must summon parent
- Summons must contain warning if parent fails to appear – Class C
- Definition of "Parent"- person standing in parental relation, a managing conservator or a custodian

[General Procedures]

Juvenile residing in another county

- Court can allow juvenile to enter plea before a judge in the juvenile's county of residence

[General Procedures]

Additional Sanctions CCP 45.057

- Juvenile cases- court may order a wide range of sanctions
- Court may order parents to attend
- Court may order payment of the program up to \$100
- Enforceable by contempt

[General Procedures]

Reports to juvenile court

- Pending non-traffic complaint against a juvenile
- Final dispositions in juvenile cases

[General Procedures]

Juvenile's failure to appear or failure to pay

- Report to the DPS
- Jailing juveniles
- Violating court order
 - Refer to juvenile court for contempt
 - Fine up to \$500
 - Order the suspension or denial of juvenile's drivers license until fully complies

[Confidential Juvenile Records]

HB 961- conditional confidentiality
Creates 44.2811, 45.0217 (CCP) 2011,
but Now,
SB 393 – extends to deferred and other
forms of probation. 9/1/13
HB 528? – total confidentiality of all
records at all stages. 1/1/14

[Confidential Juvenile Records]

Applies to all:
Convictions if judgment is satisfied, and
Dismissals after a deferred disposition
(10-16) for a misdemeanor offense (other
than traffic) punishable by fine only that
occurs anytime.

[Confidential Juvenile Records]

“...Except as provided by Article 15.27
and Subsection (b), all records and
files, including those held by law
enforcement, and information stored
by electronic means or otherwise...for
a fine-only misdemeanor offense other
than a traffic offense are confidential
and may not be disclosed to the
public.”

[Confidential Juvenile Records]

Exceptions by Court Order

- Judges or court staff
- A criminal justice agency for criminal justice purpose, as those terms are defined by Section 411.082, Government Code
- The Department of Public Safety
- An attorney for a party to the proceeding
- The child defendant
- The defendant's parent, guardian, or managing conservator

[Expunctions]

Expunction Order

The court orders the conviction, together with all complaints, verdicts, sentences, and the other documents related to the offense be destroyed and removed from the applicant's record.

[Expunctions]

■ 4 Types

- Penal Code, City Ordinance, Education Code (except Fail to Attend School – Art. 45.0216 CCP), *after 9/1/15 FTAS does not exist.
- Fail to Attend School – Art. 45.055 (old) 45.0541(new) (9/1/15) CCP
- Alcoholic Beverage Code – Section 106.12 ABC
- Tobacco – Section 161.255 HSC

■ Does not apply to traffic offenses

[Expunctions]

Upon receipt of application to expunge

- Determine the type of case the applicant wants to expunge and look to that particular code for requirements
- Decide if a hearing is necessary
- Notify necessary agencies or person of the hearing
- If no hearing – have clerk check records to determine if they have had only the one conviction
- If you find they meet the age requirement and have had only the one conviction
- Order all those who hold records to expunge the record

[Expunctions]

Penal Code, City Ordinance and Education Code cases (except Failure to Attend School)

The judge shall inform the juvenile and parent in open court of the juvenile's expunction rights and provide them with a copy of Art. 45.0216 CCP

[Expunctions]

Fail to attend school cases

The court shall inform the defendant and the defendant's parent in open court of the individual's expunction rights and provide them with a copy of Art. 45.055 CCP

[Expunctions]

Initiated by application of the convicted person.

- Age Requirements
 - Fail to Attend School cases – 18 years of age
 - Alcoholic Beverage cases – 21 years of age
 - Tobacco cases – no age requirement
 - Penal Code, City Ordinance Education Code (except Fail to Attend) – 17 years of age

[Expunctions]

- The court is required to charge a \$30.00 fee for each application for expunction in order to defray the cost of notifying state agencies.

[School Attendance]



[School Attendance]

- NOW CIVIL CASES
- Beginning September 1, 2015
 - If any element of offense occurred before September 1, 2015, then old law applies.
 - Municipal Courts are included in definition of a "truancy court"
 - Family Code Chapter 65 replaces Education Code 25.094

[School Attendance]

- School must make referral within 10 days of student's last absence. No filings after 45 days of last absence.
- Complaint must contain statement:
 - Truancy prevention measures (required)
 - Special Education Student
- If they fail to comply, judge shall dismiss the complaint

[School Attendance]

- Truancy Venue
 - Jurisdiction in the county in which the student resides or in which the school sits
 - 10 or more days or parts of days within a 6 month period in the same school year
 - Children 12 through 18 years old.

[School Attendance]

- Parent Contributing to Nonattendance
- Jurisdiction – city where parent resides or where school is located
 - Fines begin at \$100.00 for first offense up to \$500.00 for fifth offense
 - ½ of fine goes to the school district
 - May order a program in identifying problems and solutions

[Alcohol Violations]



[Alcohol Violations]

■ Offenses

- Purchase of alcohol by minor
- Attempt to purchase alcohol by minor
- Consumption of alcohol by minor
- Possession of alcohol by minor
- Misrepresentation of age by minor
- Driving a motor vehicle or a watercraft under the influence or alcohol by a minor

[Alcohol Violations]

■ Jurisdiction

- No jurisdiction if defendant is under 21 but over 17 and has two prior convictions
- DUI – 2 prior DUI convictions
- No jurisdiction if defendant is under 17 and has two prior convictions for any offense and the court has no case manager

[Alcohol Violations]

- Appearance
 - All minors (under 21) must appear in open court to enter plea
 - All defendants under age 17 must have a parent present

[Alcohol Violations]

- Penalties
 - Fine up to \$500
 - Hours of community service
 - Alcohol Awareness Course (mandatory on first offenses, discretionary on second offenses)
 - (Upon Conviction) Drivers license suspension or denial (except DUI) effective the 11th day after judgment; 30 days for first offense, 60 days for second offense

[Alcohol Violations]

- Deferred Disposition
 - To determine whether a minor has been previously convicted of an alcohol offense an order of Deferred Disposition is considered a conviction

[Alcohol Violations]

- Failure to complete the Alcohol Awareness Course, court must order DPS to suspend or deny issuance of driver's license for a period not to exceed 180 days
- An order to complete the community service requirement is enforceable by contempt

[Alcohol Violations]

- Report to the Texas Commission on Alcohol and Drug Abuse (convictions)
 - Purchase of alcohol by a minor
 - Attempt to purchase alcohol by a minor
 - Consumption of alcohol by a minor
 - Possession of alcohol by a minor
 - Misrepresentation of age by a minor
 - Driving under the influence of alcohol by a minor

[Alcohol Violations]

- Report to the Department of Public Safety
 - Convictions of any ABC offense
 - Deferred Dispositions on any ABC offense
 - Acquittals of any driving under the influence of alcohol by a minor

[Tobacco Offenses]



[Tobacco Offenses]

- Health and Safety Code
 - Possession of a tobacco product by a minor
 - Minor defined as under 18
 - Do not confuse with the Education Code prohibition of a burning tobacco product on school property

[Tobacco Offenses]

- Appearance
 - Under 17 must appear with parent
 - 17 year olds handled as adult

[Tobacco Offenses]

- Offenses
 - Possession of tobacco product by a minor
 - Purchase of tobacco product by a minor
 - Consumption or acceptance of tobacco product by a minor
 - False representation of age by a minor to obtain a tobacco product

[Tobacco Offenses]

- Waiver of Jurisdiction
 - Cannot waive jurisdiction and transfer case to juvenile court
 - Cannot be counted as previous convictions for the purpose of waiving jurisdiction

[Tobacco Offenses]

- Procedure
 - Upon conviction, set the fine and suspend "execution" of the fine for 90 days in order for the defendant to attend at Tobacco Awareness Course
 - If no course available in your area, tobacco community service (8 – 12 hours)

[Tobacco Offenses]

- Collect court costs at the time of plea
- If defendant complies, the case is dismissed and no fine is owed (first case only)
- If previous tobacco case the judgment is imposed and the fine can be reduced up to ½ if defendant completed Tobacco Awareness Course

[Tobacco Offenses]

- If defendant fails to complete Tobacco Awareness Course after a hearing, judgment is imposed and the previously set fine (up to \$250) is executed
- Failure to complete Tobacco Awareness Course court must order DPS to suspend or deny issuance of a drivers license for a period not to exceed 180 days

[SB 393 Highlights]

- Progressive sanctions by school before filing complaint
- No more citations for school offenses, school must present complaint
- Presumption of incapacity for child 10-14, can be rebutted by preponderance of the evidence

[SB 393 Highlights cont...]

- Classroom disruption, Disruption of Transportation, and Disorderly Conduct – do not apply if younger than 12
- Court may dismiss complaint on child determined to lack mental capacity

6

**THE ADJUDICATION OF JUVENILES IN
MUNICIPAL AND JUSTICE COURTS**

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CHAPTER 6
THE ADJUDICATION OF JUVENILES
IN MUNICIPAL AND JUSTICE COURTS

Introduction

Described by a juvenile law scholar as “the shadow juvenile justice system,”¹ municipal and justice courts are now the primary venue for many types of cases that historically were adjudicated by juvenile courts. Today, municipal and justice courts play a critical new role in the Texas juvenile justice system.

In Texas, either a district or county court can be designated as a juvenile court. Despite the criminal nature of the conduct that results in proceedings in juvenile court, juvenile court proceedings are matters of civil law and are governed by Title 3 of the Family Code, the Juvenile Justice Code. The purpose of the Juvenile Justice Code is distinct from the objectives of the Code of Criminal Procedure and from the specific objectives of Chapter 45 governing municipal and justice court proceedings.² The subject matter adjudicated in juvenile court falls into two categories (1) delinquent conduct and (2) CINS (conduct indicating a need for supervision).³ The distinction between delinquent conduct and CINS is that delinquent conduct is conduct that if committed by an adult could potentially result in a term of incarceration (i.e., misdemeanors other than Class C misdemeanors and contempt), whereas CINS is conduct including Class C misdemeanors (excluding traffic and tobacco offenses) and other manners of behavior that are not conducive to the well being of children (e.g., running away from home).

To conserve juvenile court resources and because it is generally believed to cost less to adjudicate cases in municipal and justice court than juvenile court, cases that can be filed as CINS are today more often filed as Class C misdemeanors. Consequently, more children are adjudicated in the Texas criminal justice system than the civil juvenile justice system. While, as will be further explained, these juvenile cases can be transferred from criminal court to juvenile court, most are not.

The shift to criminalizing the behavior of children has not come without criticism. This is particularly true in instances where criminal complaints stem from allegations of misconduct by children at school. The perceived

¹ Robert O. Dawson, *Texas Juvenile Law* (7th Edition), Texas Juvenile Probation Commission (2008) at 589.

² Compare Section 51.01, Family Code with Articles 1.03 and 45.001, Code of Criminal Procedure.

³ Section 51.03, Family Code.

outsourcing of disciplinary matters to local trial courts has increasingly gained attention from the media and the Legislature.

I. “Passing the Paddle:” The Emergence of Local Trial Courts in the Texas Juvenile Justice System and the Criminalization of Misconduct by Children

Something significant happened in Texas, and remarkably few people are aware it occurred. In a little over two decades, beginning in the 1990s, a paradigm shift occurred in the Lone Star State. The misdeeds of children—acts that in the near recent past resulted in trips to the principal’s office, corporal punishment, or extra laps under the supervision of a middle school or high school coach—now result in criminal prosecution, criminal records, and punitive fines and court costs being imposed against children ages 10 through 16.

In comparison to cases in juvenile court, cases in municipal and justice court lack any comparable intake process and there is no requirement of prosecutor review.⁴ Furthermore, while an indigent child accused of possessing drug paraphernalia in juvenile court is entitled to appointment of counsel at every stage of the proceeding,⁵ the same indigent child accused of the same offense in either a municipal or justice court has no similar assurance of an appointed attorney.⁶ Such inequities are compounded by the fact that an indigent child in a municipal or justice court can be fined upon a finding of guilt, whereas a juvenile court has neither the authority to impose a fine nor the authority to enter a judgment finding the child guilty of a crime. With the exception of a few in the public policy arena and in the legal profession, most Texas policy makers and their constituents are unaware that Texas now has two separate, unequal systems of justice for children: one civil and one criminal, even for children who have committed the same illegal act.

How did this occur? It is essentially the byproduct of a convergence of four distinct trends and events.

First, it is important to know that Texas has a distinct history of being erratic in terms of its adjudication of children and fine-only misdemeanors. In fact,

⁴ In cases involving children in municipal and justice court, there is no provision comparable to Section 53.102 of the Family Code, which requires the prosecuting attorney of a juvenile court to promptly review the circumstances and allegations of legal sufficiency and the desirability of prosecution.

⁵ Section 51.10, Family Code.

⁶ Ryan Kellus Turner, “The Oversimplification of the Assistance of Counsel in the Adjudication of Class C Misdemeanors,” *The Municipal Court Recorder*, Vol. 18, No. 3 (January 2009).

during three legislative sessions between 1987 and 1991, the Legislature changed the law governing children and fine-only misdemeanors three times.⁷

Second, Texas, like other states in the late 1980s and early 1990s, adopted a “get tough” approach to adjudicating the illegal acts of children.⁸ Such an approach seemed justified in light of dire forecasts of escalating numbers of “juvenile super predators” terrorizing our communities.⁹ In a preemptive effort to make space in juvenile court dockets for the impending swarm of juvenile super predators, Texas, like other states, resorted to what can best be described as judicial triage.¹⁰ In the process, the vast majority of cases involving the more common misdeeds of children (e.g., Minor in Possession of Alcohol, Minor in Possession of Tobacco, Failure to Attend School, curfew violations) were swept from the dockets of juvenile courts and onto the

⁷ Prior to 1987, no court had jurisdiction of alleged first or second fine-only misdemeanors. In 1987, the law was changed to allow criminal courts to have jurisdiction but allowed the transfer of third offenses to juvenile court when the child had two previous offenses. In 1989, with the exception of traffic and certain alcohol offenses, criminal jurisdiction of such cases was repealed in favor of civil jurisdiction in juvenile court. However, in order for the juvenile court to have jurisdiction, the State had to allege and prove the commission of three or more fine-only offenses (excluding public intoxication). In 1991, the Legislature regressed to a scheme similar to the one enacted in 1987. See Dawson, *Supra*, note 1 at 46.

⁸ Will Harrell and Terry Schuster, *Meeting the Needs of TDCJ’s Youthful Offender*, Office of the Independent Ombudsman of the Texas Youth Commission (May 27, 2008) at 2.

⁹ John J. DiIulio, “The Coming of the Super-Predators,” *The Weekly Standard* (November 27, 1995) at 23-28. “Due in part to the increase in crime and arrest trends, in part to the media obsession with juvenile violence, and in part to validation of the concept by a few high profile academics (e.g., John DiIulio of Princeton University and James Fox of Northeastern University), the phrase *juvenile super predator* entered the public consciousness. Juvenile super predators were characterized as ruthless sociopaths, youth with no moral conscience who see crime as a rite of passage, who are unconcerned about the consequences of their actions, and who are undeterred by the sanctions that could be leveled against them by the juvenile justice system. Some even argued that this new breed of offender had different DNA than their predecessors, changes caused by the alcohol and other drug abuse of their young, unmarried mothers. The argument went that violent juvenile crime was increasing, and would continue to increase, because this small group of juvenile super predators commits more vicious crimes with higher frequency than delinquents of past generations. The supporters of this argument concluded that the rehabilitative approach of the juvenile justice system was wasted on these youth because their natures were largely unchangeable. Deficiencies of earlier generations were attributed to factors that could be changed with appropriate interventions; but this new breed of juvenile super predator was so disturbed that change was unlikely. As a result, rehabilitation would be ineffectual. Protecting the public from these vicious juvenile criminals became the primary concern of juvenile justice policymakers.” *Juvenile Violent Offenders - The Concept of the Juvenile Super Predator*. Available on-line at www.law.jrank.org/pages/1546/Juvenile-Violent-Offenders-concept-juvenile-super-predator.html.

¹⁰ Patricia Torbert and Linda Szymanski, “State Legislative Responses to Violent Crime: 1996-1997 Update,” *Juvenile Justice Bulletin*, OJJDP (November 1998).

criminal dockets of municipal and justice courts. In retrospect, this was a bad decision because the much hyped juvenile super predators proved to be a myth: the bumper crop of youthful miscreants never materialized.¹¹ Nevertheless, ironically, as a consequence of such legislation, by 1999 the legal apparatus that now annually labels more than 160,000 children in municipal and justice courts as criminals was armed and fully operational.

Third, in 1995, prompted by concerns for school safety, discipline, and the desire to maintain law and order, Chapter 37 of the Education Code was enacted. Consequently, law enforcement emerged as a prominent new component in Texas public schools. Similarly, municipal and justice courts were expressly given jurisdiction to hear and determine criminal cases involving statutes and rules adopted by school districts relating to the protection of school buildings and grounds.¹² Chapter 37 has been widely criticized. Despite the legislative intent of zero tolerance for misconduct and returning school discipline to the local level, school attorneys claim that that with the passage of Chapter 37, “local control flew out the window.”¹³ According to a non-partisan research institute and various legal non-profits, Chapter 37 is the reason children are being accused of criminal offenses, such as Disruption of Class, when the alleged disruption is sometimes nothing more than chewing gum in class or slamming lockers in the hallway.¹⁴ These critics persuasively argue that the over-infusion of law enforcement in public school, the misapplication of the crime control model, and zeal for zero tolerance has had absurd results. What is undisputable is that since Chapter 37 became part of the Education Code, large independent school districts now have their own police departments. Similarly, schools in the most sparsely populated municipalities have school resource officers. These members of law enforcement, like all Texas peace officers, are legally authorized to use all lawful means to detect, prevent, and deter illegal conduct. While this may encompass search and seizure, it can also result in the issuance of a citation (a.k.a. arrest and release) to a child who is not old enough to drive to school, let alone promise to appear in court pursuant to the terms of their release.

Fourth, the tipping point was the Columbine High School massacre. On April 20, 1999, twelve children and one teacher were murdered. Twenty-four others

¹¹ Robin Templeton, “Superscapegoating: Teen Super Predators Hype Set Stage for Draconian Legislation,” *FAIR* (January/February 1998). Available on-line at: www.fair.org/index.php?page=1414.

¹² Section 37.104, Education Code.

¹³ Jim Walsh, Frank Kemerer, Laurie Maniotis, *The Texas Educator’s Guide to School Law (6th Edition)*, University of Texas Press (2005) at 306.

¹⁴ Miriam Rozen, “Counsel Assist with Report that Alters Education Code,” *Texas Lawyer* (June 11, 2007). Available on-line at: www.texasappleseed.net/pdf/Altered%20Education%20Code.pdf.

were injured. The Columbine High School massacre left an indelible mark on the psyche of the American people. Fear fanned the flames; decision makers responded in kind. Zero tolerance policies, which had already taken hold in many parts of the nation including Texas, became an institutional norm. Fear of violence, coupled with the popular sentiment among many school lawyers that schools should minimize their civil liability by letting law enforcement and the courts “do their job,” culminated in the wholesale outsourcing of school discipline. Municipal and justice courts became the new vice principal’s office. Thus, the descriptive term, “passing the paddle” was born.

II. Jurisdiction of Municipal and Justice Courts in Juvenile Cases

A. Overview

Municipal and justice courts have jurisdiction over “fine-only misdemeanors,”¹⁵ regardless of whether the offender is an adult or a child.¹⁶ Such courts may impose sanctions not consisting of confinement in jail or imprisonment. The imposition of a sanction or denial, suspension, or revocation of a privilege does not affect the original jurisdiction of such local trial courts of limited jurisdiction.¹⁷ The increased number of fine-only offenses and growing volume of cases filed has complicated the task of adjudicating juveniles in municipal and justice courts. Excluding local ordinance violations, the primary sources of juvenile-related criminal violations are located in the following codes:

- Alcoholic Beverage Code;
- Education Code;
- Health and Safety Code;

¹⁵ The term “fine-only” deserves emphasis and a word of warning. The typical notion of a fine-only offense is a Class C misdemeanor, punishable by a maximum fine of \$500 (Section 12.23, Penal Code). Be aware, however, that the Penal Code provides that all state law violations defined outside of the Penal Code are to be prosecuted as a Class C misdemeanor as long as they are punishable by a fine only (Section 12.41(3), Penal Code). Thus, for such non-Penal Code criminal offenses, the maximum dollar amount is determined by the Legislature (e.g., passing a school bus, defined in the Transportation Code, is punishable by a maximum fine of \$1,000). Additionally, remember that a municipality may adopt ordinances punishable by a fine not to exceed \$2,000 if the subject matter relates to fire safety, zoning, or public health and sanitation violations (Section 54.001, Local Government Code). Such violations may only be adjudicated in a municipal court (Section 29.003(a), Government Code).

¹⁶ Prior to September 1, 2009 there was a notable exception for public intoxication if committed by a person under the age of 17. However, with the passage of H.B. 558 by the 81st Regular Legislature, municipal and justice courts have jurisdiction over the offense of public intoxication of children.

¹⁷ Articles 4.11 and 4.14, Code of Criminal Procedure; Section 29.003, Government Code.

- Penal Code; and
- Transportation Code.

There is no definition of “juvenile” in these codes. Rather, these codes use the terms “child” and “minor” for the purpose of specifying certain age groups. Because the terms are not synonymous, to gain an understanding of the different definitions, courts must look to the various codes defining the terms. The following notes the definitions for child and minor contained in various codes:

- Section 51.02(2) of the Family Code defines a child as a person who is 10 years of age or older and under 17 years of age.
- Section 25.085 of the Education Code, for the purpose of determining school attendance requirements, defines a child who shall attend school as a person at least six years of age, or younger than six years of age if the child has previously been enrolled in first grade, and who has not yet reached his or her 18th birthday.
- Section 729.001 of the Transportation Code defines a person under the age of 17 as a minor.
- Section 106.01 of the Alcoholic Beverage Code defines a person who is under the age of 21 as being a minor.
- Section 161.252 of the Health and Safety Code, for the purpose of tobacco offenses, defines a person under the age of 18 as being a minor.
- Article 45.058 of the Code of Criminal Procedure defines a child as a person at least 10 years of age and younger than 17 years of age who is charged with or convicted of an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.14 of the Code of Criminal Procedure.

B. Waiver of Jurisdiction and Transfer of Cases Involving Children

In the context of juvenile cases, waiver of jurisdiction and transfer means that a municipal or justice court has elected not to exercise, or is statutorily prohibited from exercising, its criminal jurisdiction. While presumably copies of all information relating to a case are sent over to the juvenile court, the Family Code only expressly states that a court in which there is a pending complaint shall notify the juvenile court of the county in which the court is located of the pending complaint and shall furnish to the juvenile court a copy of final disposition of any matter for which the court does not waive its original jurisdiction.¹⁸ Upon waiver and transfer, the case potentially becomes a civil juvenile court case, governed by Title 3 of the Family Code.

¹⁸ Section 51.09(c), Family Code.

Mandatory Waiver and Transfer:

Generally, a local trial court must waive jurisdiction and transfer a child's case to the juvenile court if the child, as defined in Section 51.02(2) of the Family Code:

- Has been previously convicted of two or more prior fine-only offenses, other than traffic or tobacco violations;
- Has been previously convicted of two or more violations of a penal ordinance of a political subdivision other than a traffic offense; or
- Has been previously convicted of one or more of each of the types of misdemeanors described above; or¹⁹
- Is accused of committing an offense under Section 43.261 of the Penal Code (Electronic Transmission of Certain Visual Material Depicting a Minor); more commonly known in popular vernacular as "sexting."²⁰

With the exception of allegations of sexting, if a court with jurisdiction to adjudicate a Class C misdemeanor has a juvenile case manager, the court may, but is not required to, waive jurisdiction in the above situations.²¹

Discretionary Waiver and Transfer:

With the exception of traffic and tobacco offenses, a municipal or justice court may waive jurisdiction and transfer a child, as defined in Section 51.02(2) of the Family Code, to juvenile court whenever a complaint is pending against the child for any fine-only offense.²² Such waiver should, presumably, be made before the defendant enters a plea.

Traffic offenses can never be transferred to juvenile court, as traffic offenses are specifically excluded from the definition of CINS (conduct indicating a need for supervision) under Section 51.03(b)(1) of the Family Code.

¹⁹ Section 51.08(b)(1), Family Code.

²⁰ Municipal and justice courts only have jurisdiction of the offense of sexting if the accused is 17 years of age at the time of the offense. Sexting offenses that are Class C misdemeanors alleged against children are required to be transferred to juvenile court. Section 51.08(b)(1)(A).

²¹ The juvenile case manager program (Article 45.056, Code of Criminal Procedure) was created in 2001 during the 77th Legislature. Municipal and justice courts with such a program may retain or waive jurisdiction of certain offenses (specifically, those which cannot be enhanced). For a comprehensive discussion of juvenile case managers and related laws, see, Ryan Kellus Turner, "Juvenile Case Managers: The First Decade," *The Recorder*, Vol. 21, No. 2 (March 2012).

²² Section 51.08(b)(2), Family Code.

Notably, Section 161.257 of the Health and Safety Code provides that “Title 3 of the Family Code, does not apply to a proceeding under” Subchapter N, Chapter 161, entitled “Tobacco Use by Minors.” The chapter includes offenses and penalties for possession, purchase, consumption, and receipt of cigarettes or tobacco products by minors, as well as misrepresentation of age by a minor to obtain a cigarette or tobacco product. Presumably, a third or subsequent case involving tobacco use by a child may not be transferred to juvenile court.

When a municipal or justice court waives jurisdiction and transfers a case to the juvenile court, all pertinent documents in the case need to be forwarded to the juvenile court with a transfer order. If the case is being transferred under the mandatory provision because of two prior convictions, information about the two prior cases should be included. The local trial court should retain a copy of all documents.

III. Taking Juveniles into Custody

A. “Citation” vs. “Arrest”

In lieu of making a full custodial arrest and presenting a child before a magistrate, a peace officer may issue a citation.²³ To secure release, the person detained must make a written promise to appear in court by signing the written notice prepared by the officer.²⁴ In the context of a fine-only offense, a citation acts as the functional equivalent of an arrest and subsequent procedures in the following ways:

- It serves as proof that the defendant has notice that he or she is accused of a criminal offense.
- It informs the defendant of the time and date on or at which he or she may personally appear to answer the criminal allegation. Alternatively, in fine-only offenses, an adult may enter a plea by mail.²⁵ Note, however, that entering a plea by mail is not an option for defendants younger than 17 years of age.²⁶

²³ Article 45.058(g), Code of Criminal Procedure. In 2009, such authority was extended in certain circumstances to cases involving public intoxication of a child. Article 45.058(g-1) of the Code of Criminal Procedure allows a law enforcement officer to issue a field release citation as provided by Article 14.06 in lieu of taking a child into custody for public intoxication, only if the officer releases the child to the child’s parent, guardian, custodian, or other responsible adult. See, *Supra*, note 16.

²⁴ While not a full custodial arrest, Section 543.005 of the Transportation Code provides that the brief detention period in which a citation is issued constitutes an arrest.

²⁵ Article 27.14(b), Code of Criminal Procedure.

²⁶ Article 45.0215, Code of Criminal Procedure.

- The defendant’s signature on the citation, while not a plea, can be analogized to a personal bond. In addition to a warrant being issued for the initial offense, a defendant’s failure to appear as promised may result in a warrant being issued for either: Failure to Appear, a Class C misdemeanor,²⁷ or Violate Promise to Appear, applicable only to Transportation Code, Title 7, Subtitle C “Rules of the Road” offenses, punishable by a maximum fine of \$200.²⁸

In light of the U.S. Supreme Court’s decision in *Atwater v. City of Lago Vista*,²⁹ and the defeat of legislation that would have prohibited full custodial arrests for fine-only traffic offenses, Texas remains a state where peace officers have relatively unencumbered discretion to make full custodial arrests. In fact, with the exception of most speeding and open container violations, a Texas peace officer may arrest an offender without a warrant for any offense committed in his or her presence or within his or her view.³⁰ By eliminating the requirement that the offense be committed in the officer’s presence or view, the Family Code gives peace officers even broader authority to arrest juveniles. Thus, with the exception of arresting a juvenile in his or her home, a peace officer generally does not need a warrant. Rather, all that is required is probable cause.

B. The Processing of a Child Taken into Custody

While Texas law prefers arrests to occur with a warrant but provides exceptions to the warrant requirement, when it comes to juveniles, Section 52.01(a) of the Family Code sets out multiple grounds for arrest. The practical effect being, that as long as the arrest of a child is predicated on probable cause, the statutory requirements for taking a child into custody are less onerous than for the arrest of an adult. Where there is an important difference lies in what happens after the arrest. Section 51.12 of the Family Code provides that a child may be detained only in a juvenile processing office, a place of nonsecure custody, a certified juvenile detention facility, or a secure detention facility.

However, if the offense is within the jurisdiction of a municipal or justice court, then a more specific rule applies. Article 45.058 of the Code of Criminal Procedure provides procedures for taking children (ages 10-16) into custody. Under Article 45.058, a child may be:

²⁷ Section 38.10, Penal Code.

²⁸ Sections 542.401 and 543.009, Transportation Code.

²⁹ 532 U.S. 318 (2001).

³⁰ Article 14.01(b), Code of Criminal Procedure; Section 543.004, Transportation Code.

- Released to a parent, guardian, custodian, or other responsible adult;
- Taken before a municipal or justice court; or
- Taken to a place of nonsecure custody.
 - A place of nonsecure custody is defined as an unlocked multipurpose area. A lobby, office, or interrogation room is suitable if the area is not designated, set aside, or used as a secure detention area and is not part of a secure detention area. A juvenile processing office may be used as a place of nonsecure custody as long as it is not locked when being used as a nonsecure custody area.³¹
 - A place of nonsecure custody must be designated by the head of law enforcement with custody of the child.³²
 - While in the custodial area, the juvenile cannot be handcuffed to a chair, rail, or any object, and he or she must be under continuous visual observation by a law enforcement officer or a member of the facility staff. The juvenile cannot be held in the facility for longer than is necessary to take the child before a judge or to release the child to the parents. If the juvenile is being held on charges other than municipal or justice court matters, he or she may be held long enough to be identified, investigated, processed, and for transportation to be arranged to a juvenile detention facility.³³ Unless authorized by the juvenile court, a juvenile apprehended for a fine-only offense may neither be fingerprinted nor photographed while in law enforcement custody.³⁴
 - Under no circumstances is the child to be held for more than six hours.³⁵ These same regulations apply to juveniles who are picked up on curfew violation charges.³⁶ After six hours the child may be: (1) released to a responsible adult;³⁷ (2) released upon issuance of a citation;³⁸ or (3) taken before a magistrate and released on a personal bond.³⁹

C. Transfers and Referral to Juvenile Court

A juvenile may be taken into custody and presented or detained in a juvenile

³¹ Article 45.058(c), Code of Criminal Procedure.
³² Article 45.058(b), Code of Criminal Procedure.
³³ Article 45.058(d), Code of Criminal Procedure.
³⁴ Section 58.002(a), Family Code.
³⁵ Article 45.058(e), Code of Criminal Procedure.
³⁶ Article 45.059, Code of Criminal Procedure.
³⁷ Article 45.058(a), Code of Criminal Procedure.
³⁸ Article 14.06(b), Code of Criminal Procedure.
³⁹ Article 17.03, Code of Criminal Procedure.

detention center if a municipal or justice court either: (1) transfers a non-traffic case to the juvenile court, or (2) refers the child to juvenile court for contempt of court.⁴⁰

IV. Chapter 45 of the Code of Criminal Procedure Processes: Objectives and Application

Chapter 45 of the Code of Criminal Procedure contains the procedures for processing cases that come within the criminal jurisdiction of municipal and justice courts. The chapter is intended to facilitate the following objectives:

- To provide fair notice and meaningful opportunity for people to be heard;
- To ensure appropriate dignity in court procedures without undue formalism;
- To promote adherence to the rules with sufficient flexibility to serve the ends of justice; and
- To process cases without unnecessary expense or delay.⁴¹

Chapter 45 is unique in the sense that it is a code of criminal procedure within the Code of Criminal Procedure. Proceedings in municipal and justice courts are to be conducted in accordance with Chapter 45. In the event Chapter 45 does not provide a specific rule, judges are to apply the general provisions of the Code of Criminal Procedure (i.e., provisions found outside of Chapter 45) to the extent necessary to achieve the objectives stated above).⁴²

A. General Procedures

1. Child's Appearance Required

Unlike adult defendants, defendants under the age of 17 are required to appear in person in open court.⁴³ They are not allowed to appear by mail or by delivery of a plea or fine to the clerk's office. With the exception of interest of justice appointments discussed in Chapter 4, indigent juveniles in municipal or justice courts do not have a right to appointed counsel. All defendants, of course, have a right to retain counsel. Notwithstanding Articles 45.020 and 33.04 which generally govern the appearance of defendants by counsel, Article 45.0215 of the Code of Criminal Procedure ostensibly requires a child to appear with his or her retained attorney. Article 45.0215 closely parallels

⁴⁰ Article 45.058(f), Code of Criminal Procedure.

⁴¹ Article 45.001, Code of Criminal Procedure.

⁴² Article 45.002, Code of Criminal Procedure.

⁴³ Article 45.0215, Code of Criminal Procedure.

Section 53.06 of the Family Code requiring that children facing allegations of CINS or delinquent conduct personally appear in juvenile court.

2. Parent's Appearance Required

Similar to juvenile court procedure under Section 53.06 of the Family Code, the municipal or justice court is required to summon the parent, guardian, or conservator to appear with his or her child and to be present during all court proceedings.⁴⁴ The summons must contain a notice to the parent that if the parent fails to appear in court with his or her child, the parent may be charged with a Class C misdemeanor offense.⁴⁵ The summons is issued by the judge and served by a peace officer as other summonses are served. A parent, guardian, or conservator who fails to appear could be charged with the offense of failure to appear, not to be confused with the Failure to Appear offense in Section 38.10 of the Penal Code, which only applies to a defendant's failure to appear.⁴⁶

3. Continuing Obligation to Provide Court with Child's Current Address

The child and parent are entitled to written notice of their obligation under Subsections (h) and (i) of Article 45.057 of the Code of Criminal Procedure to provide the court with the child's current address.

Article 45.057(h)-(j), Code of Criminal Procedure

(h) A child and parent required to appear before the court have an obligation to provide the court in writing with the current address and residence of the child. The obligation does not end when the child reaches age 17. On or before the seventh day after the date the child or parent changes residence, the child or parent shall notify the court of the current address in the manner directed by the court. A violation of this subsection may result in arrest and is a Class C misdemeanor. The obligation to provide notice terminates on discharge and satisfaction of the judgment or final disposition not requiring a finding of guilt.

(i) If an appellate court accepts an appeal for a trial de novo, the child and parent shall provide the notice under Subsection (h) to the appellate court.

(j) The child and parent are entitled to written notice of their obligation under Subsections (h) and (i), which may be satisfied by being given a copy of those subsections by:

- (1) the court during their initial appearance before the court;

⁴⁴ *Id.*

⁴⁵ Article 45.057(g), Code of Criminal Procedure.

⁴⁶ Article 45.0215(d), Code of Criminal Procedure.

- (2) a peace officer arresting and releasing a child under Article 45.058(a) on release; and
- (3) a peace officer that issues a citation under Section 543.003, Transportation Code, or Article 14.06(b) of this code.

Article 45.057(k) provides that it is an affirmative defense to prosecution that notice was not given in accord with Subsection (j).

Municipal and justice courts (especially in metropolitan areas) have difficulties securing the initial appearance of juvenile offenders. A growing number of juveniles see no negative consequences to failing to appear. Once a peace officer provides the juvenile with the citation and “address obligation” notice, municipal and justice courts are legally able to presume that the address on the citation is a correct address until the case’s final disposition. The juvenile, and possibly even the parents, can be made legally responsible for informing the court of any change of address. Violation of this obligation is a separate Class C misdemeanor.

4. Juvenile Residing in Another County

When a juvenile resides in a county other than the county in which the alleged offense occurred, the defendant can, with permission of the court, enter a plea before a judge in the county where the defendant resides.⁴⁷ The judgment is rendered by the court in which the complaint is filed, and all fines and costs go to the original court.

B. Additional Sanctions upon Conviction

Under Article 45.057(b) of the Code of Criminal Procedure, when a child is convicted of a fine-only offense, the court may order:

- The child or the child’s parents, managing conservators, or guardians for services under Section 264.302 of the Family Code (Section 264.302 provides for early youth intervention services. See the next section for information on these services.);
- The child to attend a special program that the court determines to be in the best interest of the child, and if the program involves the expenditure of municipal or county funds, that is approved by the governing body of the municipality or county commissioners court, including a rehabilitation, counseling, self-esteem and leadership, work and job skills training, job interviewing and work preparation, self-improvement, parenting,

⁴⁷ Article 45.0215(c), Code of Criminal Procedure.

manners, violence avoidance, tutoring, sensitivity training, parental responsibility, community service, restitution, advocacy, or mentoring program; or

- The child’s parent, managing conservator, or guardian to do any act or refrain from doing any act that the court determines will increase the likelihood that the child will comply with the orders of the court and that is reasonable and necessary for the welfare of the child, including:
 - Attend a parenting class or parental responsibility program; and
 - Attend the child’s school classes or functions.

The court may require the parents, managing conservator, or guardian of a child required to attend one of the above mentioned programs to pay an amount not greater than \$100 to pay for the costs of the program. The child, parent, managing conservator, or guardian required to attend a program, class, or function may also have to submit proof of attendance to the court. An order for a child to attend any special programs is enforceable by contempt as defined in Article 45.050 of the Code of Criminal Procedure. Other orders, including those for parents or guardians, are enforceable under the municipal and justice court contempt provisions as defined in Section 21.002(c) of the Government Code.⁴⁸

C. Early Youth Intervention Services

Early youth intervention services apply to a child who is seven years of age or older and under 17 years of age. Early youth intervention services are for children and their families who are in at-risk situations. A municipal or justice court may refer a child to these services if the Department of State Health Services has contracted with the county to provide the services.⁴⁹ The services may include:

- Crisis family intervention;
- Emergency short-term residential care for children 10 years of age or older;
- Family counseling;
- Parenting skills training;
- Youth coping skills training;

⁴⁸ Municipal or justice court contempt, with the exception of children charged with contempt, is punishable by a fine of \$100 and/or three days incarceration.

⁴⁹ Section 264.302, Family Code.

- Advocacy training; and
- Mentoring.

D. Reports to Juvenile Court

When a municipal or justice court has a pending complaint against a child alleging a violation of a misdemeanor offense punishable by fine only (including ordinance violations) other than a traffic offense (or a traffic ordinance violation), the municipal or justice court shall notify the juvenile court of the pending complaint and furnish a copy of the final disposition.⁵⁰

V. Sentencing

As previously mentioned, criminal violations alleged against children stem from various statutes. Thus, when it comes to sentencing, it is important that judges become familiar with the varying nuances contained in such statutes.

An excellent resource for juvenile sentencing is the *Juvenile & Minor Chart*. It is available on-line at www.tmcec.com/public/files/File/Resources/Charts/Municipal%20Juvenile%20Chart.pdf.

A. Forms of Deferral

Chapter 45 of the Code of Criminal Procedure provides four ways that a juvenile, subject to compliance with a court order, may avoid the imposition of a final judgment of guilt: (1) deferred disposition; (2) driving safety courses; (3) teen court; and (4) commitment of chemically dependent persons.⁵¹

1. Deferred Disposition

Deferred disposition is the primary general probation statute utilized by courts governed by Chapter 45 of the Code of Criminal Procedure.⁵² Deferred disposition is available for most offenses. The exceptions are:

⁵⁰ Section 51.08(c), Family Code.

⁵¹ The last of the four, contained in Article 45.053 of the Code of Criminal Procedure, allows for the dismissal of a Class C misdemeanor charge upon satisfaction of certain conditions when a chemically dependent person is committed for treatment. Article 45.053 is seldom used but should not be overlooked. While Article 45.053 can be utilized regardless of a defendant's age, data from the National Survey of Substance Abuse Treatment Services suggests that there are between 40,000-60,000 individuals receiving treatment for chemical dependency every month in Texas and that nearly 1/3 of these individuals are between the ages of 12 and 17.

⁵² Article 45.051, Code of Criminal Procedure.

- Traffic offenses committed in a construction or maintenance work zone when workers are present;⁵³
- Alcoholic Beverage Code offenses committed by a minor who is not a child and who has been previously convicted at least twice of an offense to which Section 106.071 applies;⁵⁴
- A minor who commits the offense of driving under the influence of alcohol and has been previously convicted twice or more of that offense;⁵⁵
or
- A minor charged with consuming an alcoholic beverage if he or she has previously been convicted twice or more for consuming an alcoholic beverage.⁵⁶

As in all other proceedings involving juveniles, the court is required to summon the parents or guardian and require their presence when granting deferred disposition. Before granting deferred disposition, the judge accepts a plea of guilty or no contest, or the defendant may be found guilty after a trial. The defendant must pay court costs if the judge grants deferred disposition. When a deferred disposition is granted, the judge may impose reasonable conditions or requirements for the juvenile to perform within a certain time. The judge has the discretion to impose a probation period of up to 180 days.

The judge may require any of the following conditions:

- A bond in the amount of the fine assessed but not imposed to secure payment of the fine;
- Payment of restitution not to exceed the amount of the fine assessed to the victim, if any;
- Submit to professional counseling;
- Submit to diagnostic testing for alcohol or a controlled substance or drug;
- Submit to psychosocial assessment;
- Participate in an alcohol or drug abuse treatment or education program;
- Pay the costs of any diagnostic testing, psychosocial assessment, or participation in a treatment or education program either directly or through the court as court costs; and
- Comply with any other reasonable condition.

⁵³ Sections 472.022 and 542.404, Transportation Code; Article 45.051, Code of Criminal Procedure.

⁵⁴ Section 106.071(i), Alcoholic Beverage Code.

⁵⁵ Section 106.041(f), Alcoholic Beverage Code.

⁵⁶ Section 106.04(d), Alcoholic Beverage Code.

If the offense charged is an alcohol offense, including public intoxication, the court must require the minor to attend an alcohol awareness program approved by the Texas Commission on Alcohol and Drug Abuse when granting deferred.⁵⁷

If a minor is charged with minor in possession, minor in consumption, minor purchasing alcohol, minor attempting to purchase, misrepresentation of age by a minor, or public intoxication (under age 21), the court must require the minor to perform community service. If it is a first time offense, the community service must be not less than eight or more than 12 hours. If the minor has a previous conviction, the minor must perform not less than 20 or more than 40 hours community service as a term of deferral.⁵⁸

If the child is charged with a traffic offense classified as a moving violation, the court must require the defendant to complete a driving safety course approved under Chapter 1001 of the Education Code, and if the defendant holds a provisional license, the judge shall require the defendant to be retested by DPS as required by Section 521.161(b)(2) of the Transportation Code.

In response to studies showing that car wrecks involving teen drivers account for a disproportionate amount of traffic-related deaths and injuries, programs have been developed to address the youthful driver and the issues specific to young drivers. One such program, Alive@25, developed by the National Safety Council, targets younger drivers (ages 15-24) and has curriculum focusing on improving safety awareness and eliminating distracting behaviors. In 2011, the Legislature amended the deferred disposition statute to allow courts to order young drivers to complete an Alive@25 course or similar curriculum approved under Section 1001.111 of the Education Code. It is important to emphasize that this does not relate to a driving safety course ordered pursuant to Article 45.0511 of the Code of Criminal Procedure. Under Article 45.051(b-1), judges are already required to order a defendant younger than 25 charged with a moving violation to take a driving safety course as a condition of deferred disposition. As amended, judges now have the option, but are not required, to order the defendant to complete an additional driving safety course specifically designed for drivers younger than 25.⁵⁹ While the

⁵⁷ Section 106.115, Alcoholic Beverage Code. The Texas Commission on Alcohol and Drug Abuse became the *Texas* Department of State Health Services in September 2004.

⁵⁸ Section 106.071, Alcoholic Beverage Code.

⁵⁹ The Texas Education Agency approved course and curriculum must consist of a four-hour live, interactive course and require a written commitment by the student to their family and friends that they will not engage in dangerous driving habits. The course must include instruction in alcohol and drug awareness; Texas traffic laws; statistics on crashes and fatalities for drivers under 25; issues commonly involved in youth crashes, such as poor decision-making, risk-taking, peer pressure, impaired driving, distraction, speed, failure to

availability of these course state-wide will vary, it is likely be welcomed by municipal judges and justices of the peace who desire a live and interactive option when dealing with youthful, at-risk drivers.

The court may impose a special expense fee not to exceed the amount of the fine that could be imposed at the time the court grants the deferral. This fee can be collected at any time prior to the end of the probation period. The court may elect not to collect the special expense fee for good cause shown. At the end of the deferral period, if the juvenile presents satisfactory evidence of compliance with the requirements imposed, the judge must dismiss the complaint and show that there is not a final conviction. If the defendant does not comply with the conditions or present satisfactory evidence of compliance, the court should set the defendant for a show cause hearing and summon the parents or guardian. When a defendant fails to comply with the terms of the deferral, the court has the option of reducing the fine or imposing the original fine.⁶⁰ In the event of a default, the judge shall require that the amount of the special expense fee be credited toward the amount of the fine imposed by the judge.

2. Driving Safety Courses (DSC)

Driving safety courses are an offense-specific form of deferred disposition.⁶¹ To be eligible for a DSC, the juvenile must have a valid driver's license. Juveniles who want to take a driving safety course must make the request in open court in the presence of a parent or guardian.⁶² All defendants requesting a driving safety course must give the court a plea of guilty or nolo contendere. The court must enter a judgment on the plea.⁶³ The child then has 90 days to complete the course and present evidence of successful completion to the court. If a minor fails to complete a driving safety course, the court is required to notify the minor of a show cause hearing. The court may need to summon the parent again depending on the original instructions the court gave the parent or guardian when he or she first appeared with their child. At the hearing, the court may grant an extension of time to present the driving safety course certificate or may impose the fine. When a minor fails to appear at a show cause hearing, the minor may be charged with the offense of failure to appear.

wear a safety belt, driving at night, failure to yield the right-of-way, and using a cell phone while driving; the effects of poor decision-making on family, friends, school, and community; and the importance of taking control of potentially dangerous driving situations both as a driver and passenger.

⁶⁰ Article 45.051(d), Code of Criminal Procedure.

⁶¹ Article 45.0511, Code of Criminal Procedure.

⁶² Article 45.0215, Code of Criminal Procedure.

⁶³ Article 45.0511(c), Code of Criminal Procedure.

For more information on deferred disposition and DSC, see the TMCEC *Bench Book*.

3. Teen Court

Article 45.052 of the Code of Criminal Procedure provides authority for municipal and justice courts to defer disposition via a teen court program. Perhaps more properly described as peer sentencing, teen court is not court. Rather, it is a deferral program in which other teens sentence a juvenile defendant using a locally developed sanction grid. The sanction grid typically consists of a varying number of community service hours and other remedial measures (including but not limited to serving on a teen court jury). The deferral period under Article 45.052 may last up to 180 days. The court must approve the teen court program. To be eligible, the defendant must:

- Enter a plea of guilty or no contest in open court in the presence of a parent or guardian and request, either in writing or orally, the teen court program;
- Be under the age of 18 or enrolled full time in an accredited secondary school in a program leading toward a high school diploma;
- Be charged with a misdemeanor punishable by fine only or a violation of a penal ordinance of a political subdivision, including a traffic offense punishable by fine only;
- Not have successfully completed a teen court program in the two years preceding the date that the alleged offense occurred; and
- Before the 180th day or within 90 days of having the teen court hearing (whichever is earlier), the juvenile must provide proof of completion to the municipal or justice court.

A court may transfer a case deferred under the teen court program to a court in another county if the court to which the case is transferred consents. A case may not be transferred unless it is within the jurisdiction of the court to which it is transferred.⁶⁴

The judge must dismiss the charge at the conclusion of the deferral period if the defendant presents satisfactory evidence that he or she has successfully completed the program. A charge that is dismissed may not be part of the defendant's criminal record or driving record or used for any purpose. However, if the charge was for a traffic offense, the court shall report to the Department of Public Safety that the defendant successfully completed the

⁶⁴ Article 45.052(f), Code of Criminal Procedure.

teen court program and the date of completion for inclusion in the defendant's driving record.⁶⁵

The court is required to collect all applicable court costs. The court may require the person requesting a teen court program to pay a fee not to exceed \$10 to cover the costs of administering the deferral for the teen court. This fee is to be deposited into the city's general treasury. The court may also require the defendant to pay a \$10 fee to cover the cost to the teen court for performing its duties. This fee should be paid to the teen court program. The teen court program must account to the court for the receipt and disbursement of the fee. A defendant who fails to complete the teen court program is not entitled to a refund of either \$10 fee.⁶⁶ Those justice or municipal courts located in the Texas-Louisiana border region may charge \$20 for each of the fees discussed above.⁶⁷

The judge may exempt a defendant who has requested a teen court program from paying court costs or the fees.⁶⁸ This and Article 45.0491 of the Code of Criminal Procedure are the only sources of authority that a judge has to waive the payment of court costs. If a judge does exempt a defendant, the judge should include some type of documentation in the file to show why the court costs or fees were not collected.

B. Community Service

As discussed in Chapter 3, regardless of their age, an indigent defendant may perform community service to discharge fines and costs imposed by a municipal or justice court.⁶⁹ However, it needs to be reemphasized that community service, depending on the offense, may be required as a statutorily mandated remedial measure in cases involving a child or minor accused of a status offense. In such cases, remedial community service is mandated even in cases in which the defendant is placed on deferred disposition.⁷⁰

Prior to the 82nd Regular Legislature, community service in satisfaction of fine and costs was only available, under Article 45.049 of the Code of Criminal Procedure, to a defendant who failed to pay or who had insufficient resources to pay. Because Article 45.049 does not contain any provisions specifically contemplating defendants who are children, in 2011 the

⁶⁵ Article 45.052(d), Code of Criminal Procedure.

⁶⁶ Article 45.052(e) and (g), Code of Criminal Procedure.

⁶⁷ Article 45.052(i), Code of Criminal Procedure.

⁶⁸ Article 45.052(h), Code of Criminal Procedure.

⁶⁹ Article 45.049, Code of Criminal Procedure.

⁷⁰ The amount of hours depends on the offense. See, *TMCEC Bench Book: Juvenile and Minor Proceedings*.

Legislature passed specific community service provisions for children accused of fine-only offenses. Separate pieces of legislation created two versions of Article 45.0492 of the Code of Criminal Procedure. One version authorizes a judge to allow a child convicted of a Class C misdemeanor to discharge a fine or costs through community service without considering the child's resources and without waiting for a failure to pay.⁷¹ The other version gives a judge the authority to allow a child to discharge the fines or costs through tutoring for certain school-related offenses.⁷²

VI. Juvenile's Failure to Appear or Failure to Pay

A. Reporting to the Department of Public Safety (DPS)

Courts must report to DPS a minor charged with a traffic offense who fails to appear or who defaults on payment of a fine. When the minor makes a final disposition of the case, the court must report the final disposition to DPS.

DPS will not issue a driver's license to any minor charged with a traffic offense who fails to appear or defaults in payment of fine unless the court files an additional report on final disposition of the case.⁷³ DPS will revoke the driver's license of any minor charged with a traffic offense who fails to appear or defaults in payment of fine unless the court files an additional report on final disposition of the case.⁷⁴ DPS may not reinstate a license until the court files an additional report on the final disposition of the case. A minor whose license is suspended or revoked under this statute must pay a \$100 reinstatement fee to DPS.⁷⁵ The fee is not required if DPS rescinds the suspension or revocation or if a presiding officer or a court does not sustain the suspension or revocation.

B. Jailing Juveniles

Article 45.050 of the Code of Criminal Procedure states that a justice or municipal court may not order the confinement of a person who is a child, as

⁷¹ Bill Summary H.B. 1964, *The Recorder*, Vol. 20, No. 5 (August 2011) at 47. Notably missing from this article is a clause providing a minimum discharge of \$50 for every eight hours worked as is included in other articles dealing with community service in Chapter 45, although there is a maximum of 200 hours that can be ordered.

⁷² Bill Summary H.B. 350, *Id.* at 45. This community service options is only authorized if a defendant younger than 17 years of age is assessed a fine or costs for a Class C misdemeanor "occurring in a building or on the grounds of the primary or secondary school" at which the defendant was enrolled at the time of the offense. The nonspecific nature of this provision potentially lends itself to speculation and debate.

⁷³ Section 521.201(7), Transportation Code.

⁷⁴ Section 521.294(5), Transportation Code.

⁷⁵ Section 521.313, Transportation Code.

defined in the Family Code, for the failure to pay all or any part of a fine or costs imposed for the conviction of an offense punishable by fine only. However, courts can order juveniles be taken into custody. As previously described, the Code of Criminal Procedure provides procedures for handling juvenile offenders taken into custody for traffic offenses, other fine-only misdemeanor offenses, and status offenses.⁷⁶ Furthermore, a child may be detained in a detention facility designated by a juvenile court when a non-traffic case is being transferred from a municipal or justice court to a juvenile court.⁷⁷

C. Violation of a Court Order / Contempt

When a child fails to obey an order of a municipal or justice court, the court is authorized to either (1) refer the child to juvenile court for delinquent conduct for contempt of a justice or municipal court order or (2) retain the case and do one or both of the following: (1) fine the child up to \$500 or (2) order the suspension or denial of the child's driver's license or permit until the child has fully complied with the orders of the court. A court that orders suspension or denial of a driver's license or permit is required to notify DPS on receiving proof that the child has fully complied with the orders of the court.⁷⁸

A court may not retain a case and utilize its contempt powers and also refer the contempt case to juvenile court by alleging delinquent conduct (specifically, disobeying a lawful court order). It is important to appreciate that when a municipal or justice court opts to refer a child to juvenile court for disobeying its lawful order, that, in and by itself, is not a finding of contempt. Rather, the court is merely alleging delinquent conduct, an allegation that only a juvenile court can determine.

It is also important to note that the underlying case remains with the municipal or justice court. Only the contempt case is transferred.

D. Parents in Contempt

If a local trial court imposes a sanction under Article 45.057 of the Code of Criminal Procedure and the child violates the court order, the court may hold the child in contempt as provided in Article 45.050. Parents held in municipal or justice court contempt may be fined up to \$100 and/or incarcerated up to three days in jail.⁷⁹

⁷⁶ Article 45.058, Code of Criminal Procedure.

⁷⁷ Article 45.058(f), Code of Criminal Procedure.

⁷⁸ Article 45.050, Code of Criminal Procedure.

⁷⁹ Section 21.002(c), Government Code. For more information, see, Chapter 5 (Contempt).

VII. Dealing with JNAs (Juveniles Now Adults)

A *capias pro fine* may not be issued for an individual convicted for an offense committed before the individual's 17th birthday unless: (1) the court has already attempted to bring the child into compliance via juvenile contempt (Article 45.050 of the Code of Criminal Procedure); (2) the individual is 17 years of age or older; and (3) the court finds that the issuance of the *capias pro fine* is justified after considering the:

- Sophistication and maturity of the individual (the judge should use his or her notes taken when the juvenile made an appearance before the judge);
- Criminal record and history of the individual (generally, this will be a history of cases filed in municipal or justice court; it could also include information from the Department of Public Safety); and
- Reasonable likelihood of bringing about the discharge of the judgment through the use of procedures and services currently available to the court.

In the event the juvenile offender fails to make an appearance, and if attempts to take the juvenile into *nonsecured* custody are unsuccessful prior to the defendant's 17th birthday, a municipal or justice court may issue the juvenile a foreshadowing warning in the form of a final notice on or after the defendant's 17th birthday.⁸⁰ A notice of continuing obligation to appear must contain the following statement provided in boldfaced type or capital letters:

WARNING: COURT RECORDS REVEAL THAT BEFORE YOUR 17TH BIRTHDAY YOU WERE ACCUSED OF A CRIMINAL OFFENSE AND HAVE FAILED TO MAKE AN APPEARANCE OR ENTER A PLEA IN THIS MATTER. AS AN ADULT, YOU ARE NOTIFIED THAT YOU HAVE A CONTINUING OBLIGATION TO APPEAR IN THIS CASE. FAILURE TO APPEAR AS REQUIRED BY THIS NOTICE MAY BE AN ADDITIONAL CRIMINAL OFFENSE AND RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST.⁸¹

For additional information on JNA, see the TMCEC *Bench Book*. Additionally, a chart reflecting the steps in the JNA process is on-line available at: www.tmcec.com/public/files/File/Resources/Charts/Juvenile%20Now%20Adult%20Flow%20Chart2.pdf

⁸⁰ Article 45.060(b), Code of Criminal Procedure.

⁸¹ Article 45.060(e), Code of Criminal Procedure.

So why issue another notice to appear if the juvenile has already failed to appear once? The answer lies in the fact that the failure to obey the notice to appear is a new separate Class C offense committed, not by a child, but rather by an adult (i.e., a Violation of Continuing Obligation to Appear).⁸² As a consequence, the JNA may be arrested and taken into *secured* custody, as would any other adult arrested for a Class C misdemeanor. Once in secured custody, the JNA should be brought before the court that issued the warrant. When taking a plea, the court should take a plea on all of the outstanding offenses, including those allegedly committed by the defendant prior to becoming an adult. This is possible because municipal and justice courts do not lose jurisdiction of the original offenses due to the age of the defendant (assuming that a complaint has been filed and there is no statute of limitations issue). Potentially, juveniles who commit a Class C offense and who subsequently fail to make an appearance in court can, upon their 17th birthday, potentially face multiple charges stemming from the original offense (e.g., violate promise to appear/failure to appear, a change of address violation, and violation of the court's notice of the continuing obligation to appear). Excluding court costs and possible contempt-related fines, if convicted, such JNAs can potentially face aggregate fines up to \$2,000. As an adult, failure to pay such fines can result in the issuance of a *capias pro fine* and, upon the proper determination, commitment to jail for as long as 40 days.⁸³ This will, undoubtedly, come as a surprise to young adults and others unfamiliar with the law.

VIII. Court Records and Expunction

When court records are expunged, the records are destroyed pursuant to a court order. In a technological age, however, expunction is no longer solely a matter of gathering paper files and destroying them. Computer records must be deleted from the court's and other agencies' computers. Records kept in computers by the police department and other agencies, including school districts, alcohol or drug abuse programs, counseling services, training programs, and community service providers, must all be expunged so that complete eradication of the case history is accomplished.

Additional information on expunction of criminal records is available on-line at:
www.tmcec.com/public/files/File/Resources/Charts/Expunctions%20Juveniles%20and%20Minors.pdf.

⁸² Article 45.060(c), Code of Criminal Procedure.

⁸³ Pursuant to H.B. 2424, effective September 1, 2003, municipal courts are only required to provide \$50 jail credit per offense per 24-hour period.

A. Alcohol Offenses

A minor’s conviction of an alcohol-related offense may be expunged. To be eligible, an individual must be 21 years of age and have only one alcohol-related conviction.⁸⁴ To expunge the offense, the person must file with the local trial court an application that includes a sworn affidavit that the person only has one offense (the one he or she is trying to expunge) and is now 21 years of age. Some courts simply accept the affidavit, conduct a record check, and, in the absence of other alcohol-related offenses, expunge the conviction. Other courts conduct a more formal proceeding notifying all agencies or persons who have a relation to the case, have records about the case, or have knowledge about the applicant. These agencies might include the state and local office of the Alcoholic Beverage Commission, the Department of Public Safety (since they maintain the records of all convictions of Alcoholic Beverage Code offenses), the community service provider, the alcohol awareness program provider, the local police department, and the city attorney’s office. If no agency or person can provide evidence that the applicant was convicted of more than one alcohol-related offense, the court would grant the petition for expungement.

When a case is expunged, the judge issues an order that dictates that the conviction, along with all complaints, verdicts, sentences, and other documents be expunged from the applicant’s records. After the order is issued, the applicant is released from all disabilities arising from the conviction. In addition, the case may not be shown or made known for any purpose. The municipal or justice court shall charge \$30 for each application for expungement to defray the cost of notifying state agencies of the order for expunction.⁸⁵

B. Education Code Offense (Failure to Attend School)

Minors charged with the offense of failure to attend school can petition to have their records expunged under the Code of Criminal Procedure.⁸⁶ This section exclusively applies to the expunction of records of individuals convicted of Failure to Attend School (Section 25.094, Education Code). The request may be made on or after the individual’s 18th birthday. While the applicant may determine the form, the request must (1) be in writing, (2) be under oath, and (3) state that the applicant has no more than one conviction unless seeking an expunction under Article 45.055(e) (discussed in the next

⁸⁴ Section 106.12, Alcoholic Beverage Code.

⁸⁵ Section 106.12(d), Alcoholic Beverage Code. Also see, Article 102.006, Code of Criminal Procedure.

⁸⁶ Article 45.055, Code of Criminal Procedure.

paragraph). The court may expunge the conviction without a hearing or order a hearing if facts are in doubt. Subsection (c) of Article 45.055 of the Code of Criminal Procedure specifies what documents are to be expunged, including documents in the possession of the school district, special programs provider, the police department, and the prosecutor's office. The municipal or justice court shall charge \$30 for each application for expungement to defray the cost of notifying state agencies of the order for expunction.⁸⁷

Changes to Article 45.055(e) of the Code of Criminal Procedure, effective September 1, 2011, require municipal, justice, and county courts, with no application necessary, to expunge the records of a criminal conviction of Failure to Attend School (regardless of whether the defendant has been previously convicted) if the defendant has successfully complied with all conditions imposed by the court under Article 45.054 of the Code of Criminal Procedure or has obtained a high school diploma or high school equivalency certificate and presents it prior to turning 21.⁸⁸ It should be noted that, for this new category of expunction, no application is required. As the filing of the application is what triggers the \$30 fee, presumably, no fee is collected for an Article 45.055(e) expunction.

C. Health and Safety Code Offense (Tobacco)

Minors (as well as adults) may apply to the court to have a conviction of a tobacco-related offense expunged.⁸⁹ Since the statute requires the court to determine if the defendant satisfactorily completed a tobacco awareness program or tobacco-related community service, the court should set a hearing on the application. All agencies or persons who have a relation to the case, records about the case, or knowledge about the applicant should be notified.

⁸⁷ Article 45.055(d), Code of Criminal Procedure. Also see, Article 102.006, Code of Criminal Procedure.

⁸⁸ Bill Summary S.B. 1489, *The Recorder*, Vol. 20, No. 5 (August 2011) at 51. The amendment of Article 45.054 by S.B. 1489 is problematic. Most courts are going to have to reconsider what constitutes "a finding" that an individual has committed the offense of Failure to Attend School. If a court relies on a conviction as its "finding" (which is currently the standard accepted practice), there will be a problem because this section requires the complaint to be dismissed (and a complaint cannot be dismissed once a final judgment is entered). Presumably the amendment of Article 45.054 will necessitate the court now take some action short of a final judgment and continue the case to see whether the defendant complies with the court's orders. The statute provides no name for this process. Perhaps it can be described as a *judgment withheld*. While this may at first glance seem unfamiliar, it is similar to how municipal and justice courts handle driving safety course orders (Article 45.0511(l), Code of Criminal Procedure) and courses taken for alleged tobacco offenses (Section 161.253(f), Health and Safety Code). It creates a deferral-like process, yet it is distinct from the previously described four forms of deferral.

⁸⁹ Section 161.255, Health and Safety Code.

At the hearing, if the judge determines that the defendant has complied, then the court orders the expunction. The municipal or justice court shall charge \$30 for each application for expunction to defray the cost of notifying state agencies of the order for expunction.⁹⁰

D. Penal Offenses

Article 45.0216 of the Code of Criminal Procedure allows individuals with only one fine-only penal offense conviction to request expunction on or after turning 17 years of age. The application is made directly to the local trial court in which the individual was charged or convicted. The request must be made under oath. The municipal or justice court shall charge \$30 for each application for expunction to defray the cost of notifying state agencies of the order for expunction.⁹¹ Records of a person under 17 years of age relating to a complaint dismissed under Article 45.051 (deferred disposition) or Article 45.052 (teen court) may be expunged under this section as well.⁹²

E. Transportation Code and Other Offenses

Petitions for expunction must be filed pursuant to Chapter 55 of the Code of Criminal Procedure in district court.

IX. Confidentiality

A. The Shift from Non-Disclosure to Confidentiality

In 2009, in an effort to provide some semblance of parity between the civil and criminal juvenile justice systems, the Legislature passed S.B. 1056. The bill added Subsection (f-1) to Section 411.081 of the Government Code, requiring criminal courts to issue a non-disclosure order upon the conviction of a child for a fine-only misdemeanor offense. While the intentions of the new law were applauded, non-disclosure was plagued with deficiencies that rendered it ineffective.⁹³ By 2011, it was clear that the system for processing non-disclosure orders (via the Texas Department of Public Safety) was ill-equipped to handle the large volume of convictions involving children that occur in municipal and justice courts.⁹⁴

⁹⁰ Section 161.255(b), Health and Safety Code. Also see, Article 102.006, Code of Criminal Procedure.

⁹¹ Article 45.0216(i), Code of Criminal Procedure. Also see, Article 102.006, Code of Criminal Procedure.

⁹² Article 45.0216(h), Code of Criminal Procedure.

⁹³ Mark Goodner, "Controlling the Taint of Criminality: Children and Orders of Nondisclosure," *The Recorder*, Vol. 19, No. 3 (July 2010) at 5.

⁹⁴ From 2009 to 2011, no municipal court in Texas reported to TMCEC having received

In 2011, non-disclosure laws pertaining to children convicted of Class C misdemeanors were repealed and replaced with laws providing children with conditional confidentiality.⁹⁵

Note the following about conditional confidentiality:

- Article 45.0217 of the Code of Criminal Procedure provides that all records and files, including those held by law enforcement and all electronically stored information, relating to a child who (1) is convicted of and (2) has satisfied the judgment for a fine-only misdemeanor offense (other than a traffic offense) are confidential and may not be disclosed to the public. The language in Article 45.0217 parallels the language in Title 3 of the Family Code, which protects records relating to juvenile conduct when adjudicated through the juvenile courts.
- Like nondisclosure orders, confidentiality only applies to cases in which a *conviction* is obtained. This means there is no confidentiality for records related to a case where a child defendant receives deferred disposition and the case is subsequently dismissed or where a child gets a dismissal from successful completion of teen court. Unlike nondisclosure, this new confidentiality does not attach to records until the judgment is *satisfied*. Nondisclosure orders were generated automatically upon conviction and were problematic in the event the child did not pay the fine, attend an awareness class, or complete community service. Questions arose as to whether the court could turn the child over to collections, accept payment from a parent on a child's fine, or issue a *capias pro fine* and publicize that fact when the child turned 17. It bears repeating: confidentiality is conditional. It is *not* automatic. In order for confidentiality to occur, the child must first discharge the judgment of the court.
- Confidentiality does *not* apply to traffic offenses. This exclusion reflects the original intent behind S.B. 1056 but was not part of the plain language of the nondisclosure statute. Why are traffic offenses excluded? Because, unlike most other Class C misdemeanors, fine-only traffic offenses can never be adjudicated in a juvenile court. The scope of confidentiality is limited to offenses that can, but are not, filed in juvenile court.
- Article 45.0217 provides that the records are confidential and may not be released to the public, but provides a few exceptions. The information can

confirmation that its non-disclosure order was disseminated by DPS.

⁹⁵ See, Bill Summary H.B. 961, *The Recorder*, Vol. 20, No. 5 (August 2011) at 46. H.B. 961 replaces procedures for *nondisclosure* with procedures that conditionally make particular criminal case records *confidential*. Additionally, DPS will no longer be involved in the process.

be inspected by judges, court staff, a criminal justice agency for a criminal justice purpose, the Department of Public Safety, the defendant, the defendant's attorney, a prosecuting attorney, or the defendant's parent, guardian, or managing conservator. This is a rather significant change from the nondisclosure process where parents were not a permissible party to receive information about a child's case. This reflects the Legislature's intent to keep parents involved in their child's criminal cases. Law enforcement required to notify schools upon the arrest of the child under Article 15.27 of the Code of Criminal Procedure also have an exception from the confidentiality provision.

- Article 44.2811 of the Code of Criminal Procedure addresses confidentiality of records on appeal from a municipal or justice court. On appeal from a municipal court of non-record or justice court, confidentiality will apply under Chapter 44 only if the child is again convicted and satisfies the judgment. If the case is dismissed upon appeal or the child is acquitted, there will be no confidentiality. Likewise, confidentiality will only apply to records relating to a case appealed from a municipal court of record if the judgment is affirmed and then satisfied; if the judgment is reversed, there will be no confidentiality. In either case—appeal from a record or non-record court—confidentiality is only triggered upon satisfaction of the judgment. Article 44.2811 references Article 45.0217 for purposes of providing the same exceptions to confidentiality.
- Changes in the law apply to convictions occurring before, on, or after the effective date of the act: June 17, 2011. This saves courts the headache of having to determine date of conviction to know whether the records can be released under the common-law right of inspection. All cases where the child has satisfied the judgment, other than traffic convictions, are now confidential as provided in Article 45.0217 of the Code of Criminal Procedure. All records related to cases in which no conviction was obtained are subject to the common-law right of inspection. All cases subject to an existing nondisclosure order will still be subject to the nondisclosure order.

B. Information Obtained by Data Sharing

Distinct from records that may or may not be subject to confidentiality, are documents and information obtained by a court as a result of data sharing. State laws allow some information sharing relating to children between the governmental entities, including courts. Subject to certain exceptions, such information is confidential.

Access to juvenile records is generally governed by Chapter 58, Subchapter A of the Family Code. In 2011, Section 58.0051 of the Family Code, governing access to interagency sharing of educational records, was expanded so that “a

court with jurisdiction over juveniles” (e.g., a municipal or justice court) is considered a “juvenile service provider.”⁹⁶ In conjunction with an amendment to Section 37.084(a) of the Education Code, a school district superintendent or the superintendent’s designee is no longer *authorized*, but rather *required* to disclose confidential information contained in a student’s educational records⁹⁷ upon request of a municipal court in instances where a child has been taken into custody under Section 52.01 of the Family Code.⁹⁸

Exchanged information remains confidential, and a juvenile service provider may establish internal protocol for sharing information with other juvenile service providers as necessary to efficiently and promptly disclose and accept information.⁹⁹

Another confidential avenue of information about juveniles is the Juvenile Justice Information System (JJIS).¹⁰⁰ Until 2011, municipal and justice courts were not allowed access to JJIS. S.B. 1106 amended Section 58.106 of the Family Code, to allow access to county, justice, or municipal courts exercising jurisdiction over a juvenile.¹⁰¹ Information obtained through JJIS is distinct from other information that criminal courts are accustomed to having in case files. It cannot be emphasized enough that information obtained by a court through the JJIS is always confidential and must be managed in a manner to prevent dissemination to unauthorized personnel and to the public.

Judges and court personnel should be mindful that with new technological access to information comes new ways for impartiality of a court to be called into question. The improper or untimely use of such information poses potential ethical problems for judges. Special care and consideration should be exercised before a judge exposes him or herself to information obtained through data sharing.

⁹⁶ Bill Summary S.B. 1106, *The Recorder*, Vol. 20, No. 5 (August 2011) at 49.

⁹⁷ Examples include information regarding special needs, educational accommodations, disciplinary records, and psychological diagnoses.

⁹⁸ Section 52.01(a) sets out numerous grounds for taking a child into custody; including the broad catchall, “pursuant to the laws of arrest.” It ostensibly does not include instances where a child is either issued a citation or summonsed to court.

⁹⁹ Under 58.0051 of the Family Code, juvenile service provider requestors shall pay a fee to the disclosing entity in an amount equal to that which is charged for providing public information under Chapter 552 of the Government Code, unless an agreement among the entities prohibits or provides an alternate method of assessing the fee, the fee is waived of the fee, or the disclosure is required by law.

¹⁰⁰ Chapter 58, Subchapter B, Family Code.

¹⁰¹ Another bill passed into law in 2011, S.B. 1241, limited access of such courts to cases involving school attendance.

AN ACT

relating to the sealing of and restricting access to juvenile records of adjudications of delinquent conduct or conduct indicating a need for supervision and to the confidentiality of records of certain misdemeanor convictions of a child.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 44, Code of Criminal Procedure, is amended by adding Article 44.2811 to read as follows:

Art. 44.2811. RECORDS RELATING TO CHILDREN CONVICTED OF FINE-ONLY MISDEMEANORS. All records and files and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child who is convicted of and has satisfied the judgment for a fine-only misdemeanor offense other than a traffic offense are confidential and may not be disclosed to the public except as provided under Article 45.0217(b). All records and files and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child whose conviction for a fine-only misdemeanor other than a traffic offense is affirmed are confidential upon satisfaction of the judgment and may not be disclosed to the public except as provided under Article 45.0217(b).

SECTION 2. Subchapter B, Chapter 45, Code of Criminal Procedure, is amended by adding Article 45.0217 to read as follows:

Art. 45.0217. CONFIDENTIAL RECORDS RELATED TO THE CONVICTION OF A CHILD. (a) Except as provided by Article 15.27 and Subsection (b), all records and files, including those held by law enforcement, and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child who is convicted of and has satisfied the judgment for a fine-only misdemeanor offense other than a traffic offense are confidential and may not be disclosed to the public.

(b) Information subject to Subsection (a) may be open to inspection only by:

(1) judges or court staff;

(2) a criminal justice agency for a criminal justice purpose, as those terms are defined by Section 411.082, Government Code;

(3) the Department of Public Safety;

(4) an attorney for a party to the proceeding;

(5) the child defendant; or

(6) the defendant's parent, guardian, or managing conservator.

SECTION 3. Section 58.003(c), Family Code, is amended to read as follows:

(c) Subject to Subsection (b), a court may order the sealing of records concerning a person adjudicated as having engaged in delinquent conduct that violated a penal law of the grade of felony only if:

(1) the person is 19 [~~24~~] years of age or older;

(2) the person was not transferred by a juvenile court under Section 54.02 to a criminal court for prosecution;

(3) the records have not been used as evidence in the punishment phase of a criminal proceeding under Section 3(a), Article 37.07, Code of Criminal Procedure; and

(4) the person has not been convicted of a penal law of the grade of felony after becoming age 17.

SECTION 4. Subchapter A, Chapter 58, Family Code, is amended by adding Section 58.00711 to read as follows:

Sec. 58.00711. RECORDS RELATING TO CHILDREN CONVICTED OF FINE-ONLY MISDEMEANORS. Except as provided by Article 45.0217(b), Code of Criminal Procedure, all records and files and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child who is convicted of and has satisfied the judgment for a fine-only misdemeanor offense other than a traffic

offense are confidential and may not be disclosed to the public.

SECTION 5. Section 58.203(a), Family Code, is amended to read as follows:

(a) The department shall certify to the juvenile probation department to which a referral was made that resulted in information being submitted to the juvenile justice information system that the records relating to a person's juvenile case are subject to automatic restriction of access if:

- (1) the person is at least 17 [~~21~~] years of age;
- (2) the juvenile case did not include violent or habitual felony conduct resulting in proceedings in the juvenile court under Section 53.045; and
- (3) the juvenile case was not certified for trial in criminal court under Section 54.02[~~and~~]; ~~and~~
~~[(4) the department has not received a report in its criminal history system that the person was granted deferred adjudication for or convicted of a felony or a misdemeanor punishable by confinement in jail for an offense committed after the person became 17 years of age].~~

SECTION 6. Section 58.208, Family Code, is amended to read as follows:

Sec. 58.208. INFORMATION TO CHILD ON DISCHARGE. On the final discharge of a child from the juvenile system or on the last official action in the case, if there is no adjudication, the appropriate juvenile justice official shall provide to the child:

- (1) a written explanation of how automatic restricted access under this subchapter works;
- (2) a copy of this subchapter; and
- (3) a statement that if the child wishes to receive notification of an action restricting access to the child's records under Section 58.207(a), the child must before the child's 17th [~~21st~~] birthday provide the juvenile probation department with a current address where the child can receive notification.

SECTION 7. Section 58.209(a), Family Code, is amended to read as follows:

(a) When a child is placed on probation for an offense that may be eligible for automatic restricted access at age 17 [~~21~~] or when a child is received by the Texas Youth Commission on an indeterminate commitment, a probation officer or an official at the Texas Youth Commission reception center, as soon as practicable, shall explain the substance of the following information to the child:

- (1) if the child was adjudicated as having committed delinquent conduct for a felony or jailable misdemeanor, that the child probably has a juvenile record with the department and the Federal Bureau of Investigation;
- (2) that the child's juvenile record is a permanent record that is not destroyed or erased unless the record is eligible for sealing and the child or the child's family hires a lawyer and files a petition in court to have the record sealed;
- (3) that the child's juvenile record, other than treatment records made confidential by law, can be accessed by police, sheriff's officers, prosecutors, probation officers, correctional officers, and other criminal and juvenile justice officials in this state and elsewhere;
- (4) that the child's juvenile record, other than treatment records made confidential by law, can be accessed by employers, educational institutions, licensing agencies, and other organizations when the child applies for employment or educational programs;
- (5) if the child's juvenile record is placed on restricted access when the child becomes 17 [~~21~~] years of age, that access will be denied to employers, educational institutions, and others except for criminal justice agencies; and

(6) ~~[that to have the child's juvenile record placed on restricted access at age 21, the child must not:~~

- ~~[(A) commit a felony or jailable misdemeanor; and~~
- ~~[(B) receive deferred adjudication for or be convicted in adult court of a felony or jailable misdemeanor; and~~

~~[(7)] that restricted access does not require any action by the child or the child's family, including the filing of a petition or hiring of a lawyer, but occurs automatically at age 17 [~~21~~ if the child does not commit a criminal offense in the future].~~

SECTION 8. Section 411.0851(a), Government Code, is amended to read as follows:

(a) A private entity that compiles and disseminates for compensation criminal history record information shall destroy and may not disseminate any information in the possession of the entity with respect to which the entity has received notice that:

- (1) an order of expunction has been issued under Article 55.02, Code of Criminal Procedure; or
- (2) an order of nondisclosure has been issued under Section 411.081(d) [~~or (f-1)~~].

SECTION 9. The heading to Section 552.142, Government Code, is amended to read as follows:

Sec. 552.142. EXCEPTION: RECORDS OF CERTAIN DEFERRED ADJUDICATIONS [~~AND CERTAIN MISDEMEANORS PUNISHABLE BY FINE ONLY~~].

SECTION 10. Section 552.142(a), Government Code, is amended to read as follows:

(a) Information is excepted from the requirements of Section 552.021 if an order of nondisclosure with respect to the information has been issued under Section 411.081(d) [~~or (f-1)~~].

SECTION 11. Section 552.1425(a), Government Code, is amended to read as follows:

(a) A private entity that compiles and disseminates for compensation criminal history record information may not compile or disseminate information with respect to which the entity has received notice that:

- (1) an order of expunction has been issued under Article 55.02, Code of Criminal Procedure; or
- (2) an order of nondisclosure has been issued under Section 411.081(d) [~~or (f-1)~~].

SECTION 12. Sections 411.081(f-1) and (j), Government Code, are repealed.

SECTION 13. Sections 58.003(c), 58.203(a), 58.208, and 58.209(a), Family Code, as amended by this Act, apply to the sealing of and restricting access to records in the adjudication of a juvenile case on or after the effective date of this Act, regardless of whether the adjudication occurred before, on, or after the effective date of this Act.

SECTION 14. Articles 44.2811 and 45.0217, Code of Criminal Procedure, and Section 58.00711, Family Code, as added by this Act, and Sections 411.0851(a), 552.142, and 552.1425(a), Government Code, as amended by this Act, apply to convictions before, on, or after the effective date of this Act.

SECTION 15. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I certify that H.B. No. 961 was passed by the House on May 4, 2011, by the following vote: Yeas 141, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 961 was passed by the Senate on May 25, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor