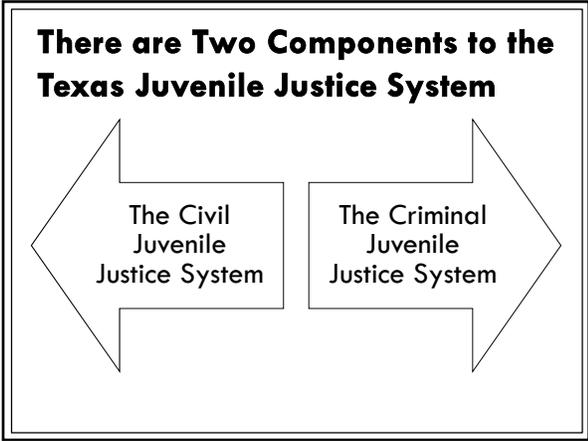


The Juvenile Justice System: Role of the Municipal Courts
Mark Goodner
Program Attorney & Deputy Counsel
Texas Municipal Courts Education Center



The Shadow Juvenile Justice System

- The great majority of juvenile cases are filed in municipal and justice courts
- Typically, there are more than 300,000 cases filed annually in municipal courts
- Over 100,000 more juvenile cases 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.

**Municipal Court
Juvenile Jurisdiction**

- Fine-only misdemeanors
 - Adults
 - Juveniles
- **BUT!!!!**
 - More!
- **WHY?**
 - Usuals
 - Juvenile-only offenses

Status Offenses

- Action that is prohibited for minors or children because of their age
- conduct that would not be a crime if committed by an adult

What is a status offense?

- §51.02 of the Family Code defines a status offender as "a child who is accused, adjudicated, or convicted for conduct that would not, under state law, be a crime if committed by an adult..."

Children and Minors in the Code

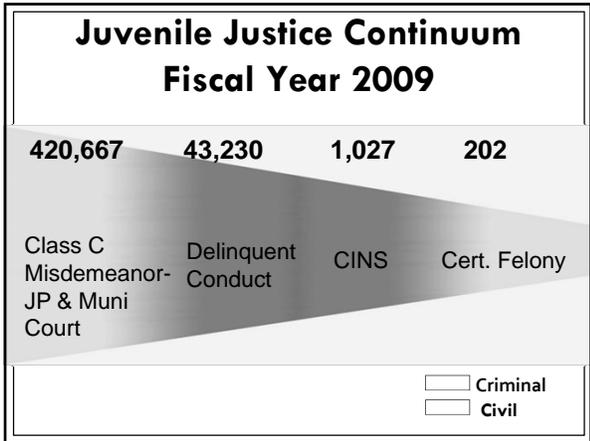
Code	Term and Definition
• Family Code	• Child - 10 or older and under 17
• CCP	• Child – same (plus charged or convicted)
• Transp. Code	• Minor – Under 17
• ABC	• Minor – Under 21
• HSC	• Minor – Under 18
• Education Code	• At least six years of age, or who is younger than six years of age and has been previously enrolled in first grade and has not yet reached their 18 th birthday

Why have status offenses?

- The basis for status offenses is believed to stem from the legal theory of *parens patriae*
- *Parens patriae* is Latin for “father of the people” and refers to the public policy power of the state to act as a parent for children in need of protection

Why have status offenses?

- Paternal role: protecting the children
- Protecting society, maintaining order
- Setting example for the future
- Conduct is sometimes seen as gateway conduct to more severe behavior
- The rest of our criminal laws may not be applicable.
 - P.C. 8.07: Age Affecting Criminal Responsibility



How Did We Get Here?

- Legislature Inconsistent
- Get Tough / Zero Tolerance
 - Fear of Juvenile Crime → *Juvenile Super Predator*

How Did We Get Here?

1. Legislature Inconsistent
2. Get Tough / Zero Tolerance
 - Fear of Juvenile Crime → *Juvenile Super Predator*
3. Chapter 37 Education Code
 1. ISD Police Departments
 2. School Resource Officers
 3. Criminal enforcement of rules adopted by school boards
4. The Tipping Point – Columbine Massacre

• Civil Juvenile Justice System

The Two Systems



• Criminal Justice Systems

Two Systems in Action

<p>Tweedle Dee - Civil</p> <ul style="list-style-type: none"> • Right to Appointed Counsel • Statutory Diversion • No fines • Records are confidential 	<p>Tweedle Dum - Criminal</p> <ul style="list-style-type: none"> • No appointed counsel • Child must appear in open court • Fines and Court Costs • Criminal Records
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Which is more appropriate for the child?

?

The Code of Criminal Procedure

- This Code is intended to embrace rules applicable to the prevention and prosecution of offenses against the laws of this State
- It seeks:
 1. To adopt measures for preventing the commission of crime;
 2. To exclude the offender from all hope of escape;
 3. To insure a trial with as little delay as is consistent with the ends of justice;
 4. To bring to the investigation of each offense on the trial all the evidence tending to produce conviction or acquittal;
 5. To insure a fair and impartial trial; and
 6. The certain execution of the sentence of the law when declared.

Juvenile Justice Code Purposes

- (§ 51.01 Family Code)
 - to promote the concept of punishment for criminal acts
 - To provide treatment, training, and rehabilitation
 - To provide for the care, protection, and the wholesome, moral, mental, and physical development of children coming within its provisions
 - to remove, where appropriate, *the taint of criminality* from children committing certain unlawful acts

Things to think about

- Is there a need for the two different systems?
- With the change to the handling of records, what concerns remain?

Thank You!

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Juveniles in Municipal Court:

•
Cathy Riedel, Program Director
Texas Municipal Courts Education Center

What We Should Know About Dealing With Juveniles

How parents see kids (before they've had more than one)



While others may see.....



Here is what
grandparents think.



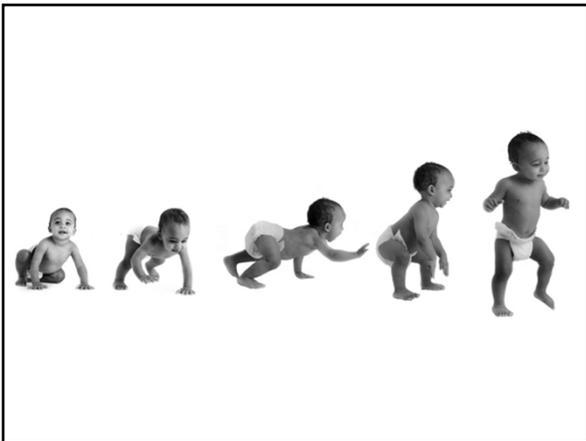
Here is what kids think!

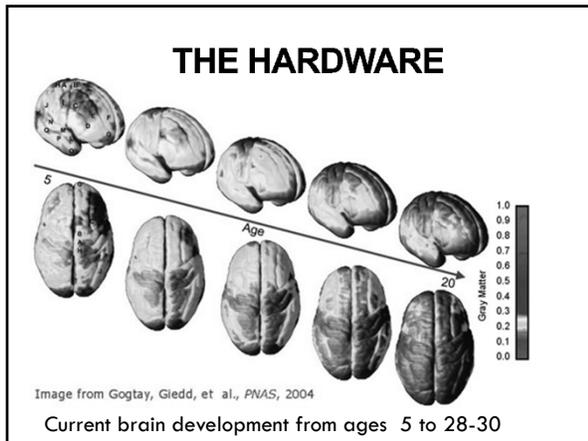
GRANDPARENTS
so easy to operate
even a child can do it
www.mommy.com

Intake and administrative matters

1. Why is that kid in your Court?
2. Citation vs. Arrest
3. What do you do with a child taken into custody?
4. Appearance in court
5. Reports to file
6. Juvenile Records

**What is a juvenile?
What were they
thinking?**





- “Developmental Tasks” of Adolescence
- Identity (Who am I and how do I fit in?)
- Sexual Integration (How do I deal with these intense hormonal changes and urges? How does my physical, sexual body affect who I am? Who am I attracted to? Can I accept all this?)
- Autonomy (You're not the boss of me!)

Every Single Thing a Teenager does, no matter how obnoxious or irritating, is done in the service of mastering adolescent developmental tasks!

Emergence of Juvenile Justice Systems



1899 Jane Addams—founder of first “settlement house” special advocate for needs of children

1920-30’s Promote welfare of children, est. of separate juvenile systems—not just “little adults”

“encircled by the arm of the state”



A Shift—In Re Gault 387 US 1 (1967)

“beginning of the end of traditional juvenile court”

US Supreme Court says juveniles entitled to same rights as adult criminally accused.

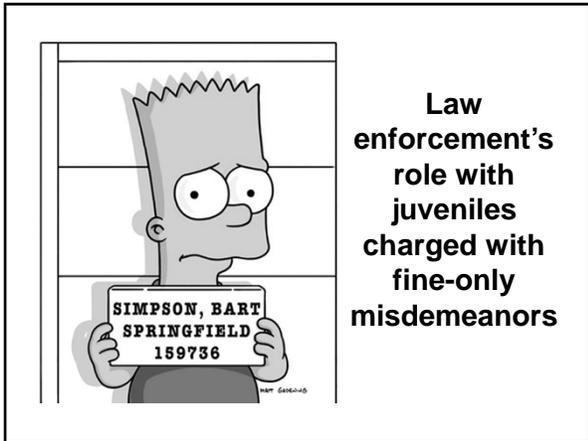


Pendulum swing 1980-90s “Passing the Paddle”

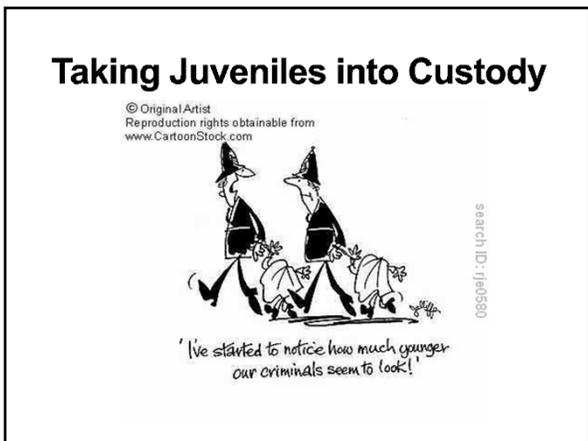
- ✓ Sociologists describe as “Moral Panic” due to “moral poverty of modern culture”
- “Normative Misbehavior” becomes criminal
- ✓ Prevalence of status crimes
- ✓ “Zero Tolerance”
- ✓ Emergence of SRO programs

Stanford v. Kentucky—Juv Death Penalty
492 US 361 (1986)





Can a Juvenile be Arrested?
Arrest without warrant: Art. 14.01
C.C.P.



Juveniles - What We Should Know

Code of Criminal Procedure, Article 14.06:

In lieu of taking the person before a magistrate, an officer may issue a citation to a person (including a child) charged with a Class C misdemeanor, except for public intoxication

**Custody of Juveniles
Education Code –Failure to Attend**

Sec. 25.094 (d-1) Pursuant to an order of the county, justice, or municipal court based on an affidavit showing probable cause to believe that an individual has committed an offense under this section, a peace officer may take the individual into custody. A peace officer taking an individual into custody under this subsection shall:

(1) promptly notify the individual's parent, guardian, or custodian of the officer's action and the reason for that action; and

Juveniles - What We Should Know

(2) without unnecessary delay:

(A) release the individual to the individual's parent, guardian, or custodian or to another responsible adult, if the person promises to bring the individual to the county, justice, or municipal court as requested by the court; or

(B) bring the individual to a county, justice, or municipal court with venue over the offense.

Juveniles - What We Should Know

Can a juvenile who has been arrested for Public Intoxication be released to the care of another sober person?

Juveniles - What We Should Know

Code of Criminal Procedure, Article 14.031:

In lieu of arresting an individual who is not a child and who commits PI, a peace officer may release the individual if:

- (1) the officer believes detention in a penal facility is unnecessary for the protection of the individual or others; and
- (2) the individual:
 - (A) is released to the care of an adult who agrees to assume responsibility for the individual . . .

Answer: NO, not under 14.031 (prohibits peace officers from releasing a child to a responsible adult in lieu of arrest for PI)

Juveniles - What We Should Know

Code of Criminal Procedure, Article 45.058(g-1):

A law enforcement officer may issue a field release citation in place of taking a child into custody for PI only if the officer releases the child to the child's parent, guardian, custodian, or other responsible adult.

Answer: YES under 45.058(g-1)

Juveniles - In Custody

Can a child be taken into custody?
What are the custodial requirements for doing so?
Can they be released?

Juveniles - What We Should Know

Code of Criminal Procedure, Article 45.060(a)

Except as provided by Articles 45.058 and 45.059, an individual may not be taken into secured custody for offenses alleged to have occurred before the individual's 17th birthday.

Juveniles - Custody

Code of Criminal Procedure, Article 45.058(a)

A child may be released to the child's parent, guardian, custodian, or other responsible adult as provided by Section 52.02(a)(1), Family Code, if the child is taken into custody for an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.14.

Juveniles - What We Should Know

If not released:

(b) A child described by Subsection (a) must be taken only to a place previously designated by the head of the law enforcement agency with custody of the child as an appropriate place of nonsecure custody for children unless the child:

- (1) is released under Section 52.02(a)(1), Family Code; or
- (2) is taken before a justice or municipal court.

Juveniles - What We Should Know

What is a place of nonsecure custody?



Juveniles - What We Should Know

(c) A place of nonsecure custody for children must be 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.

Juveniles - What We Should Know

Can a juvenile processing office be used as a place of nonsecure custody?

Juveniles - What We Should Know

(c) . . . A place of nonsecure custody may be a juvenile processing office designated under Section 52.025, Family Code, if the area is not locked when it is used as a place of nonsecure custody.

Juveniles - What We Should Know

What procedures shall be followed in a place of nonsecure custody for children?

Juveniles - What We Should Know

(d) The following procedures shall be followed:

(1) a child may not be secured physically to a cuffing rail, chair, desk, or other stationary object;

(2) the child may be held in the nonsecure facility only long enough to accomplish the purpose of identification, investigation, processing, release to parents, or the arranging of transportation to the appropriate juvenile court, juvenile detention facility, secure detention facility, justice court, or municipal court;

Juveniles - What We Should Know

(d) The following procedures shall be followed:

(3) residential use of the area is prohibited; and

(4) the child shall be under continuous visual supervision by a law enforcement officer or facility staff person during the time the child is in nonsecure custody.

Juveniles - What We Should Know

How long can a juvenile be detained in a nonsecure custody situation?

Juveniles - What We Should Know

(e) Notwithstanding any other provision of this article, a child may not, under any circumstances, be detained in a place of nonsecure custody for more than six hours.

Curfew Violations-Special Rules

- Person taken into custody younger than 17 for curfew violation SHALL without unnecessary delay:
 - Be released to parent, custodian or guardian;
 - Taken before justice court or municipal court to answer charge;
 - Or
 - Taken to place designated as juvenile curfew processing office by head of law enforcement

Juveniles in Municipal Court:

How can a juvenile appear in municipal court?

Juveniles in Municipal Court:

Code of Criminal Procedure, Article 45.0215

(a) If a defendant is younger than 17 years of age and has not had the disabilities of minority removed, the judge or justice:

(1) must take the defendant's plea in open court; and

Juveniles in Municipal Court:

(2) shall issue a summons to compel the defendant's parent, guardian, or managing conservator to be present during:

(A) the taking of the defendant's plea; and

(B) all other proceedings relating to the case.

Juveniles in Municipal Court:

What happens if a Parent/Guardian cannot be located or summonsed to court?

Juveniles in Municipal Court:

(b) If the court is unable to secure the appearance of the defendant's parent, guardian, or managing conservator by issuance of a summons, the court may, without the defendant's parent, guardian, or managing conservator present, take the defendant's plea and proceed against the defendant.

Note: it is a Class C misdemeanor for the parent to ignore the summons! Thus, the summons must include a warning to that effect.

Juveniles in Municipal Court:

A child and parent 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.

A violation may result in arrest and is a Class C misdemeanor.

The child and parent are entitled to written notice of their obligation, either in open court in initial appearance, by peace officer arresting and releasing the child, or on a citation issued to the child

- Article 45.057(h)-(j)

Juveniles in Municipal Court:

If the defendant resides in a county other than the county in which the alleged offense occurred, the defendant may, with leave of the judge of the court of original jurisdiction, enter the plea before a judge in the county in which the defendant resides

Juveniles in Municipal Court:

**How can a juvenile be punished
in municipal court?**

Reports on Juveniles

- Report notice of pending complaint and copy of final disposition to Juvenile Court for offense other than traffic or city ordinance (Sec. 51.08(c) F.C.)
- Reports to DPS of traffic convictions, bail forfeiture, failure to appear or pay, ABC convictions/deferreds, acquittal for DUI, failure to attend alcohol awareness program, tobacco awareness programs
- (DIC-15)

Juveniles in Municipal Court:

**Are juvenile records confidential?
What about nondisclosure orders?**

Article 45.0217 C.C.P.

- Child who has been CONVICTED and has SATISFIED JUDGMENT for fine-only offense
- Records are confidential and may not be disclosed to public
- this includes all records, files electronic or otherwise of law enforcement and the court
- Exceptions to sealing: judges/staff, criminal justice agency, DPS, attorney for party to proceeding, defendant, or defendant's parent

Source Materials:

- Clerk Study Guide Level II- Juveniles and Minors

Legal, Logistical, and Ethical Issues Relating to Juvenile Case Manager in Municipal Courts
Managing Juvenile Cases
TMCEC AY 2012Law

I. Law : The Statutory Evolution of Juvenile Case Managers

- A. 2001
 - 1. “Truancy Case Managers” (SB 1432)
 - 2. Reimbursement from the Gov. (SB 1432)
 - 3. Art. 45.054, CCP: “Employment of Case Manager in Juvenile Cases” (HB 1118)
 - 4. Implication on Transfer (HB 1118)
 - 5. Which is better to play or punt?
- B. 2003
 - 1. Renamed “Juvenile Case Manager” (HB 2319)
 - 2. Consolidation of Employment Provisions (HB 2319)
 - 3. Effort to Segregate Family Code and CCP Provisions relating to Children
 - 4. The Addition of Article 45.056(e) CCP and its Consequences
- C. 2005
 - 1. Art. 102.0174, CCP: Birth of the local court for JCM funding (HB 1575)
 - 2. Art. 45.056(a)(2) Authorization of Inter-Local Agreements
- D. 2007
 - 1. Harris County Questions Constitutionality of Art. 102.0174, CCP: AG Opinion RQ-579 (2007) because court costs are punitive and optional costs result in variances in punishment. (See, *The Recorder* (May 2007)).
 - 2. Note: Subsequently, Court of Criminal Appeals holds that court costs are not punitive but rather administrative (*Weir v. State*, 278 S.W.3d 364 (Tex. Crim. App. 2009))
- E. 2009
 - 1. Legislation requiring JCM training and setting qualifications are introduced but not passed into law.
 - 2. Legislation regarding JCM supervision is introduced but is not passed into law.
- F. 2011
 - 1. Legislation requiring JCM training and setting qualifications is introduced and passed into law. (SB 61)
 - 2. What can be purchased with the JCM fund is expanded (SB 61)
 - 3. Legislation regarding JCM supervision is introduced is passed into law. (SB 209)
 - 4. Article 45.056(e) is repealed. (SB 1489)

5. Article 102.0174(g) is more restrictive the fund may not be used to supplement the salary of someone whose primary role is not JCM. You cannot collect the JCM fee if you don't have a JCM program. (SB 1489)

II. Logistical Issues: Models of Juvenile Case Management

- A. Case Work Model – Intake, assessment, and accessing social services (see, Article 45.056(g), CCP added by SB 209)
- B. Probation Model – Supervising compliance with orders (Art. 45.056(c), CCP)
- C. Court Clerk – Administering the courts juvenile docket (Art. 45.056(e), CCP)
- D. Hybrid

III. Ethical Issues

- A. For Judges – Ex parte information (See, Canon 3B(8)(d))
- B. For JCMs – When to share information?
- C. Propriety in JCM Fund Use

Managing Juvenile Cases: Mandatory and Discretionary Transfer of Juvenile Cases

Question: Must a municipal court hear every Class C Misdemeanor case involving a child?

Statutory Authority: Section 51.08, Family Code: Transfer from Criminal Court

- The defendant must be a “child”
 - Section 51.02(2) defines a “child” as a person who is 10 years of age or older and under 17 years of age at time of offense
- The charge must be one that can be transferred
 - Must be delinquent conduct or conduct indicating a need for supervision (CINS)
 - Cannot transfer traffic cases
 - What about tobacco cases under Chapter 161 of the Health and Safety Code?

Mandatory vs. Discretionary Transfer

- Mandatory transfer of a child previously convicted of two or more fine-only offenses (other than traffic)
 - Do not count DSC, deferred, or teen court...they are not “convictions”
 - Exception: a court with a *Juvenile Case Manager* is not subject to this type of mandatory transfer
- Mandatory transfer of sexting cases
 - Section 43.261, Penal Code
 - Court must transfer sexting case against a child
 - JCM exception does not apply to this type of mandatory transfer
- Discretionary transfer of offenses (other than traffic)
 - No or only one previous fine-only conviction (other than traffic)
 - Or anytime at courts’ discretion (unless it is traffic)

Procedure When Transferring a Case

When a case is transferred, what documents must the transferring court send to the juvenile court?

- Transfer order
- Copy of the complaint/citation
- Other papers, documents, and transcripts of testimony related to the case

Must the child be taken into custody pending action by the juvenile court?

- Child shall be ordered to be taken to the place of detention designated by the juvenile court, or
- Child shall be released to the custody of the child’s parent, guardian, or custodian, to be brought before the juvenile court at a time designated by that court

Ethical Considerations

- Canon 3B (1): A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate.
- Canon 3B (2): A judge should be faithful to the law and shall maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.
- Canon 3B (9): A judge should dispose of all judicial matters promptly, efficiently and fairly.

Questions to consider:

- Under what kind of circumstances should a municipal court make a discretionary transfer?
- What sources of information may a judge ethically consider in deciding whether to transfer a juvenile case?
- Are any sources ethically questionable?
- In terms of the defendant's rights, when, if ever, may it be procedurally too late for a judge to decide to make a discretionary transfer of a juvenile case?

Transfer of Failure to Attend School Cases

- Juvenile Court may not refuse mandatory transfer of a FTAS case if prosecuting attorney determines case is legally sufficient for adjudication in juvenile court
- Juvenile Court may transfer truancy cases on either a case by case basis or as a class if the municipal court accepts
 - Can be transferred for up to one year as a class
 - Complaint would be filed as criminal FTAS, not as civil truancy

Transfer of Juvenile Cases from Municipal to Juvenile Court

Case filed in municipal court



start

First question:
Is the case a sexting offense against a child?

MUST waive jurisdiction and TRANSFER case to juvenile court end

YES

NO

Third question:
Does court have a juvenile case manager?

← YES

Second question:
Does juvenile have 2+ prior (non-traffic) convictions?

YES

NO

No mandatory transfer

MUST waive jurisdiction and TRANSFER case to juvenile court end

NO

Final question:
Should non-traffic case be transferred?

YES

NO

Waive jurisdiction and TRANSFER case to juvenile court

Retain jurisdiction of case and proceed

• Send case documents to juvenile court end

*Notify juvenile court of case end