

Juvenile Process and Procedures

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Table of Contents:

- 1. Juvenile Justice System History**
- 2. Juvenile Law and Procedure in Texas**
- 3. Specific Terminology of Juvenile Law**
- 4. Juvenile Disposition Options**
- 5. Juvenile Arrests**
- 6. Searches Involving Juveniles**
- 7. Disposition of Arrested Juveniles**
- 8. Juvenile Confessions**
- 9. Photographs and Lineups**
- 10. Fingerprinting**
- 11. Alcohol Beverage Code Specifics and DUIM**
- 12. Liability of Parents for Conduct of Child**
- 13. Child Custody Issues**
- 14. Education Code**

Handout materials

- 1. Juvenile Arrest Requirements**
- 2. Juvenile Statements Requirements**
- 3. Written Confession Example Form**
- 4. School Notification Form**
- 5. Movement of Juveniles in TX. Justice System**
- 6. Juvenile Offender Definitions Wallet Card**

1. JUVENILE JUSTICE SYSTEM HISTORY:

The first juvenile court was established in Chicago in 1899. Considering the long history of the law and justice in general the juvenile justice system is a relatively recent development. The last 30 years has seen many modifications made to the structure of the juvenile justice system due to Supreme Court decisions, Federal legislation and specifically in Texas changes in state legislation that has been driven primarily by the Juvenile Justice and Prevention Act, which addressed custody issues. We will examine this act and its influences in more detail in a few minutes. It is important to know why we do some of the things we do when processing juvenile offenders, and this act helps explain where these laws came from.

There has been a perception of rising violent juvenile crime in America, primarily during the 1990's, fueled by events such as Columbine and other such violent acts off of the school grounds. Individuals, not only from the media, but also local politicians, have portrayed these events to be evidence of a rising juvenile crime problem that needs immediate attention. This of course translates into spending more public money and the formation of new laws, which in turn the politicians, can take credit for enacting. Actually what the media and the politicians need to be informing the people is that the crime rate, except for the past year which may be an exception, has been falling, along with the rate of arrest for adults. They also should be telling the public that although we may handle many kids on a yearly basis in law enforcement that according to recorded statistics that 54% of the males and 73% of the females who enter the juvenile justice system never

return on a new referral (Juvenile Offenders and Victims: 1999 National Report). They also fail to mention that serious violence by juveniles dropped 33% between 1993 and 1997. Again, ask yourself why this happens.

Early in U.S. history children who broke the law were often treated the same as adults. Children as young as 7 years old could stand trial and could be sentenced to prison or even death. However, as early as 1825 the Society for the prevention of Juvenile Delinquency was advocating the separation of juvenile and adult offenders. The first juvenile court, established in Cook county, was based on the doctrine of *parens patriae* (the state as a parent) which was interpreted to mean that because children were not of full legal capacity that the state had a responsibility to provide protection for the children whose parents may not be providing appropriate care or supervision. We can see by 1910 that 32 states had established juvenile courts and/or probation services, and that by 1925 all but two states had followed their lead. Since that time most juvenile courts have had exclusive jurisdiction over juvenile offenders, except in cases where the juvenile waived jurisdiction or the juvenile was certified to stand trial as an adult in certain circumstances.

The focus on offenders and not offenses, on rehabilitation and not punishment, has had substantial procedural impact (Juvenile Offenders and Victims: 1999 National Report). Unlike their adult counterparts the juvenile courts control their own intake, and unlike criminal prosecutors juvenile court intake could consider extra-legal factors as well as legal in deciding how to handle juvenile cases. In

the courtroom the hearings were much less formal than their adult counterparts and a wide range of disposition options are available to a judge wanting to help rehabilitate a child.

During the 1960's a series of Supreme Court decisions started requiring that the juvenile courts become more formal and more like criminal courts for adults due to the perceived problems with rehabilitation of juvenile offenders in the past. Formal hearing were now the norm, and delinquents faced possible confinement, which accorded them the protection against self incrimination and the right to know the charges against them, they could present witnesses in their defense and have an attorney represent them. Proof beyond a reasonable doubt became the norm also rather than a preponderance of the evidence. About this same time Congress jumped in with the Juvenile Delinquency Prevention and Control Act of 1968, recommending that children charged with a non-criminal offenses be handled outside of court. In 1974 Congress also passed the Juvenile Justice and Delinquency Prevention Act, which required deinstitutionalization of status offenders and non-offenders as well as the separation of juvenile offenders from adult offenders. In the 1970's community based programs became popular as a way of treating juvenile offenders.

In the 1980's we see that the juvenile justice system coming ever more closely to resemble that of the adult justice system and some juveniles were removed from the juvenile justice system to face trial as adults for certain offenses. This again was due to the public perception that juvenile crime was increasing at an unacceptable rate and that the system was being too lenient to juvenile offenders,

a perception we have again seen in the 1990's as a result of the overreaction of the press and the elected officials bent to make reelection and to drive readership in their newspapers and magazines. Between 1992 and 1997 all but a handful of states changed laws in one or more of the following areas:

- Transfer provisions- laws made it easier to transfer juvenile offenders from the juvenile justice system to the criminal justice system.
- Sentencing authority- laws gave criminal and juvenile courts expanded sentencing options.
- Confidentiality- laws modified or removed traditional juvenile court confidentiality provisions by making records and proceedings more open.
- Victim rights- laws increased the role of victims of juvenile crime in the juvenile justice process.
- Correctional programming- as a result of the transfer and sentencing laws, adult and juvenile correctional administrators developed new programs. (Juvenile Offenders and Victims: 1999 report).

**SHOW FIRST VIDEOTAPE HERE, MASSACHUSETTES SCHOOL OF LAW.

2. JUVENILE LAW AND PROCEDURE IN TEXAS:

I believe that a brief review of the Texas juvenile justice system history will help us understand the law and procedures that we have and currently work with in Texas. I will briefly review the laws origins, along with terminology and related procedural process to help us clarify the juvenile process that we must as officers follow carefully as we navigate the juvenile justice system.

Juvenile law and procedures in Texas can be seen as a combination of laws drawn from several areas. Juvenile law is actually a civil proceeding as the charges are brought by means of a civil lawsuit, unlike its adult counterpart, which is based in criminal law. For example, did you know that although we charge a juvenile with the commitment of a particular crime, such as burglary or assault that the Texas juvenile system sees the case as the same charge: juvenile delinquency. All this time you probably thought that they were being charged with a specific offense (even Harris County files the original charges as if they resembled the adult system) when in fact the courts look at them as simple delinquency.

The original Title III of the Texas Family Code was written in 1973 and has been amended numerous times since then. The most significant changes came in 1995 with the 74th Texas Legislature. The changes were primarily focused on the violent and habitual offenders, which was due to media and politician almost hysteria about the rising crime rate, which in reality was already in the beginning stages of a decline. The main goals of the juvenile justice system as mandated by the Texas Family Code Ann. 51.01 (Vernon 1996) are to provide for the safety and protection of the public, promote the concept of punishment and

accountability, and provide treatment and rehabilitation of the juvenile offender in the community.

Juvenile Justice and Delinquency Prevention Act

In 1974 Congress passed what became known as the Juvenile Justice and Delinquency Prevention Act. This act required states wishing to participate in the formula grants program to deinstitutionalize status offenders and non-offenders as well as required the separation of juvenile delinquents from adult offenders. In the 1980 amendments, Congress added a requirement that juveniles be removed from adult jails and lockup facilities. The sight and sound separation requirement specifies that juveniles shall not be detained or confined in any institution in which they have contact with adult persons that have been incarcerated.

Also, December 10, 1996 the Congress saw once again an opportunity to modify the act requirements by:

- Clarifying the sight and sound separation requirement, saying that brief, accidental contact is not a reportable violation.
- Expand the six-hour grace period to include six hours both before and after court appearances.
- Allowed adjudicated delinquents to be transferred to adult institutions once they have reached the states age of full criminal responsibility.

3. SPECIFIC TERMINOLOGY OF THE JUVENILE LAW :

Child

A child is a person who is 10 years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

Status Offenses:

A child who is accused, adjudicated, or convicted for conduct that would not, under state law, be a crime of committed by an adult (51.02 (15)).

For example: There are **six types of status offenses**:

1. **Truancy** under section 51.03 (b)(2), 51.02 (15)(a)
2. **Running away from home** under section 51.03 (b)(3).
3. **Failure to attend school** under section 25.094, Education Code, 51.02(15)(D).
4. Violation of **standards of student conduct** as described by section 51.03(b)(5).
5. Violation of **juvenile curfew** ordinance or order section 51.02(15)(f).
6. Violation of the Alcoholic Beverage Code applicable to minor's section 51.02 (15)(G).

When a minor is arrested for several of the above offenses, such as for minor in possession of alcohol, he can be released to a parent or guardian after the issuance of a field citation. For such offenses as curfew the child can be released either to a parent, to the school, or if there is no one to take possession, you may take them to your juvenile processing facility. The juvenile, once reaching the facility, must not be confined in a locked room and must remain sight and sound separated from any adult offenders. It is also important to recognize that status offenses are fineable offenses only, and the judge may impose a fine or other community sanctions, but cannot jail or detain the child.

Delinquent Conduct:

1. **Conduct that violates a penal law of Texas or the United States that is punishable by imprisonment or by confinement in jail** (class “B” through Capital Felonies).
2. A **violation of a lawful order of a juvenile court** except an order prohibiting commission of fineable offenses only, such as runaway or truancy.
3. Conduct that violates a municipal or justice court order under circumstances that would constitute **contempt of court**; and
4. Conduct that violates sections 49.04, 49.05, 49.06, 49.07, or 49.08, penal code (this section regulates **driving while intoxicated offenses**).
5. Conduct that violates section 106.041, Alcoholic Beverage Code, relating to DWI (this section relates to driving while any amount of alcohol is detected on a person, first two offenses are class “C”, the third is class “B”).

Juveniles who have been arrested for any of the above offenses are treated, for the most part, as their adult counterparts, except for two exceptions:

1. An adult is taken to a central booking facility, booked, placed in a holding facility, and when charged, bond is set for a later appearance in criminal courts.
2. A juvenile, who must be sight and sound separated from adult offenders, is taken, without unnecessary delay, to a juvenile processing office in a law enforcement facility, where for a felony or jailable misdemeanor, the child is fingerprinted and photographed. The states required paperwork, forms CR-43J and/or CR-44J, must be completed and sent to the intake office of the juvenile court, and the child is released to his or her parent or is taken to the juvenile detention facility.

Conduct Indicating a Need For Supervision- Defines as conduct, other than traffic offenses, that violate:

1. Penal laws punishable by fine only or penal ordinances of any political subdivision of the state.
2. Truancy
3. Runaway
4. Inhalant abuse
5. An act that violates a school districts previously communicated written standards of student conduct for which the student has been expelled; or

6. Conduct that violates a court order for which a child declared at risk (Texas Family Code Ann. 51.03).

Show Scenario One Video Tape Here

In Review

Status Offenders:

1. Must be held in an unlocked multi-purpose room, which is in no way designed for residential use (52.027).
2. Must not be handcuffed to any stationary object.
3. Must be held only long enough for identification, investigation, arranging transportation, and processing 52.027 (d)(2).
4. Status offenders may not be fingerprinted nor photographed 58.002(a).
5. Must have continuous, visual supervision 52.027 (d)(4).
6. May not be held longer than 6 hours 52.027(e).

Addendum:

Just because a person may be under age 17 when committing an offense does not mean the juvenile court has jurisdiction over the case. There are four exceptions in which a criminal court has jurisdiction over a case even though the person was under 17 at time of offense.

Question: Does anyone know what those exceptions are?

Answer: The exceptions are:

1. **Perjury-** Section 51.03(c) states that “Nothing in this title prevents criminal proceedings against a child for perjury. There is actually concurrent jurisdiction over perjury by both the juvenile courts and the criminal courts.

2. **Traffic offenses-** Section 51.03(a)(1) and (b)1, exclude traffic offenses from being delinquent conduct or conduct in need of supervision. Also the Transportation Code Section 729.003(g) states that a traffic offense is “within the jurisdiction of the courts regularly empowered to try misdemeanors carrying the penalty provided by this chapter, and is not under the jurisdiction of a juvenile court. The reason for excluding traffic offenses is to conserve the time and resources of the juvenile system for more serious offending.

Two exceptions are:

- a. **Failure to stop and render aid-** is tried under the juvenile courts jurisdiction, unless damages (FSGI) are under \$200, which is then tried in the municipal courts.

- b. **DWI-** is under the jurisdiction of the juvenile courts as delinquent conduct.

3. **Offenses punishable by fine only**- the juvenile courts do not have jurisdiction over fineable only offenses, unless the case is first filed in criminal court and transferred to the juvenile court by the criminal court. The municipal or justice court has the discretion to transfer any fineable only case, other than traffic offenses, to juvenile court, where it can be handled as a CINS case. However, if a fineable only case (other than a traffic offense) is filed in municipal or justice court and the juvenile has two prior convictions for fineable only offenses (other than traffic offenses) then transfer to a juvenile court becomes mandatory under section 51.08(b). The statute is not clear on whether the two prior convictions must have been obtained in separate proceedings or may have been from the same proceeding.
4. **Certain alcohol offenses**- I will talk more specifically about alcohol offenses in a later section of this presentation, so I will defer covering this exception for now.

Delinquent Conduct Custody Specifics:

1. He/she may be held up to, but not longer than, 6 hours in a secure (locked) processing room and may not be left unattended 52.025 C (d).
2. He/she must be sight and sound separated from adults 51.12 (f).
3. The secure custody is continued only as long as it takes within the six-hour limit, to investigate and process the youth or arrange for transportation 52.025 (b).
4. If police wish to question the child, he has been informed of his rights by a magistrate 51.095(a)(1).

5. He may be transported to a juvenile detention center awaiting a hearing before a judge or released to a parent or guardian 52.02 (a).

[Show Scenario Two Video Tape Here](#)

This scenario is interesting for three reasons:

1. It shows us that when a crime is committed and you have a school involved that you may request to question the child on the school grounds about the incident.
2. You do not need parental permission to question a student suspected of a delinquent offense. If present they should be advised of the arrest and other pertinent information, however.
3. Shows that officers may search a juvenile (with probable cause) and his personal effects in a situation like this.

Questions pertaining to scene two of video:

1. What is the maximum time that a juvenile offender can be held in secure lockup?

Answer- 6 hours, no longer.

2. What are the rules regarding separation of adult and juvenile offenders?

Answer- must be sight and sound separated.

3. What are the two acceptable methods of releasing a juvenile (who can they be released to)?

Answer- to a parent (on scene or at station) or to juvenile probation department.

What Happens after the juvenile is turned over to the probation department:

Detention Hearing- If a child is taken into custody juvenile probation initially determines if the person meets the definition of child (verify age) and whether probable cause exists to believe the child engaged in the crime with which he or she has been charged. In Harris County the probation department works closely with the district attorneys office in this effort, as the police officer usually calls the district attorneys office to get charges accepted (this may vary with your county). Then the probation department takes over with the processing and disposition of the juvenile pending formal court proceedings. Intake then determines if the child will be detained or not as is guided by the Texas Family Code in making a determination if the child will be held or released to a parent or guardian pending trial. They screen the cases to determine if probable cause exists and make decisions on whether informal or formal court proceedings are needed under the Family Codes statutory default intake plan

At least one of the following criteria must be present before the decision is made to deny release of the child:

- The child is likely to abscond or be removed from the jurisdiction of the court.
- Suitable supervision, care or protection for the child is not being provided by a parent, guardian, custodian or other person.
- The child has no parent, guardian, custodian or other person able to return him to court when required.
- The child may be a danger to himself or he may threaten the safety of the public if released.

- The child has previously been found to be a delinquent child or has previously been convicted of a penal code offense punishable by a term in jail or prison and is likely to commit an offense if released (Texas Family Code Ann., 54.01)

- If a child is detained by intake then a judge must make a finding of probable cause within 48 hours and hold a detention hearing within one or two working days. Detention hearings are then held every ten days thereafter.

4. **JUVENILE DISPOSITION OPTIONS:**

Disposition usually falls into one of three categories:

1. **Disposition without referral to court-** law enforcement officers may divert juvenile cases from formal or informal proceedings with juvenile probation departments by sending the child to a first offender program or other informal disposition (Harris County does not use this).
2. **Informal proceedings-** includes supervisory caution and deferred prosecution (usually for less serious offenses).
 - a. Supervisory caution- probation provides counseling for the child and refers the child and family to needed social services (first time offenders/minor offenses).
 - b. Deferred prosecution- alternative to seeking a formal adjudication of delinquent conduct or conduct in need of supervision. Usually is a six-month period of voluntary probation, and if the child violates terms of probation the court can proceed with formal adjudication.
3. **Formal Court Proceedings:** Decision is usually made by the prosecutor of a case. The prosecutor can ask that the child be certified as an adult under certain circumstances or the prosecutor may elect to proceed with either determinate sentencing or normal delinquency or CINS proceeding.

- a. **Certification as an adult**- for many chronic or serious felony offenders this may be an appropriate action by the prosecutor. The child may then be sentenced as an adult, except the child cannot receive the death penalty for an offense committed before turning 17 years of age. A child 14 years of age who is convicted of the following offenses may be certified: capital felonies, aggravated controlled substances felonies, or first-degree felonies. For all other felonies the child must be age 15 at time of the offense.

- b. **Determinate sentencing**- legislation enacted in September of 1987 was to deal with violent offenses committed by juveniles under the age of 15. If a prosecutor chooses to invoke determinate sentencing a grand jury must approve of the petition. If the court concludes the child may then be committed to the Texas Youth Commission with a possible transfer to the Texas Department of Criminal Justice for up to 40 years, depending on the offense. The child is eligible for determinate sentencing if they commit any of the following offenses: murder, capital murder, attempted capital murder, aggravated kidnapping, aggravated sexual assault, sexual assault, aggravated assault, aggravated robbery, injury to a child, elderly individual, or disabled person, arson with bodily injury or death, aggravated controlled substance offenses, criminal solicitation of a minor, and criminal attempted murder. The law also provides that a child may receive determinate sentencing for habitual felony conduct

- c. **Delinquency petition**- majority of juvenile cases are handled using normal delinquency petition. The child may be given probation, a commitment to TYC, the drivers license may be suspended in certain circumstances (alcohol or drug

violations), order affecting persons other than the child (order to pay child support, injunctive orders, etc.) or orders for restitution or community service.

- d. **CINS petition**- If the child was adjudicated for only a CINS offense the court may not send them to TYC. The probation alternative is available, and if a child violates conditions of CINS probation a new petition for delinquency may be filed.

5. JUVENILE ARRESTS AND SEARCHES:

First let's state the obvious. Any law enforcement officer defined as such by the Texas Government code, chapter 415, may arrest a juvenile. Others, such as a probation officer, can only arrest if there is probable cause to believe that the child has violated a condition of probation imposed by the juvenile court under section 52.01 (a) (4).

Arrests and Investigatory Stops: Section 52.01 (b) provides the taking of a juvenile into custody is not an arrest except for the purposes of determining the validity of taking him into custody or the validity of a search under the laws and constitution of this state.

Constitutional requirements of the Fourth Amendment of the U.S. Constitution and Article I, section 9 of the Texas Constitution govern when a juvenile may be taken into custody for a criminal offense.

Probable Cause- Just as in an adult arrest and search situation we must have probable cause to arrest or search the juvenile offender. *Lane v. State*, 767 S.W. 2d 789 (Tex. Crim. App. 1989) established the probable cause requirement of Article I, Section 9 and the Fourth Amendment to juvenile proceedings. An arrest warrant is constitutionally required only when the arrest is made in the dwelling of the arrestee (See *Payton V. New York*, 445 U.S. 573, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980) *United States v. Watson*, 423 U.S. 411, 96 S. Ct. 820, 46 L. Ed 2d 598 (1976).

Also note that there is no requirement of an arrest warrant or other court order to arrest on probable cause. Probable cause of a violation of the law is enough in itself to arrest, but be careful that you do not push the envelope when dealing with juvenile arrests. You absolutely should have good probable cause for the arrest.

Reasonable Suspicion- The Fourth Amendment requires reasonable suspicion generally for an investigative stop. The courts have allowed adult standards to be used, which permits brief, investigatory detentions on reasonable suspicion following the lack of statutory guidance.

In the Matter of M. V., UNPUBLISHED, No. 04-98-00762-CV, 1999 WL 391856, 1999 Tex.App.lexis 4442, Juvenile law Newsletter 99-3-06 (Tex.App.-San Antonio 1999), officers testified while passing by a school ground on bicycle patrol, observed three juveniles passing a baggie between them. On approaching them, the juveniles seemed surprised, and one made a movement toward his shoe, stuffing something into it. One of the officers immediately handcuffed the juvenile and asked what was in his shoe. The Court of Appeals analyzed this fact situation as an investigatory stop on reasonable suspicion. The handling of the baggie and the surprised look on the boys' faces gave reasonable suspicion to stop them to investigate. The handcuffs were properly used for the officers' protection and did not go beyond the force authorized during an investigatory stop. Only after the marijuana was found did the officer arrest the juvenile and at that time he had probable cause do so.

By contrast, officers in *In the Matter of C.R.*, UNPUBLISHED, No. 03-96-00429-CV, 1997 WL 348532, 1997 Tex.App. Lexis 3307, *Juvenile Law Newsletter* 97 - 3-16 (Tex.App.-Austin 1997) observed the respondent walking away from a running vehicle stopped in a cul-de-sac near a subsidized housing project. Respondent walked toward two other men standing on the sidewalk, and they huddled together as the vehicle backed out of the cul-de-sac. As the officers approached in an unmarked vehicle, the respondent and two others began walking away. They began running when the officers exited the vehicle and one officer chased and caught the respondent. The Court of Appeals held these circumstances did not give rise to reasonable suspicion. The Court held, "... conduct that does not sufficiently set a person apart from innocent persons under the same circumstances does not, alone, create reasonable suspicion; an officer must have facts increasing the likelihood of criminal conduct."

Question for you: If you are on patrol and you observe a juvenile in a vehicle during curfew hours can you stop him based on his "youthful appearance"?

Answer: Yes you can. In the Matter of C. R., UNPUBLISHED, No. 04-98-00389-CV, 1999 WL 15963, 1999 Tex.App.Lexis 135, *Juvenile Law Newsletter* 99-1-19 (Tex. App.-San Antonio 1999), answered the question of whether an officer has reasonable suspicion for an investigatory stop to determine whether there is a curfew violation, youthful appearance and time of day by themselves are sufficient. If an officer stops a juvenile to investigate a curfew violation and determines that a violation has occurred, the officer may take the juvenile into custody. At that point, a full search incident to a lawful arrest may be conducted

of the person of the juvenile. Section 52.028(a). In the Matter of J. M., Unpublished, No. 03-98-00206- CV, 1999 WL 372508, 1999 Tex. App. Lexis 4293, Juvenile Law Newsletter 99-3-05 (Tex. App.-Austin 1999).

6. SEARCHES INVOLVING JUVENILES:

Third Party Consent:

Question: You receive a call to go to a residence where a family disturbance is in progress between a mother and her son. You arrive at the scene, get things under a semblance of control and the mother tells you her son has dope in his room and she wants it removed from her house. The son tells you no way, that is an invasion of his privacy. Do you search the room or not?

Answer is yes. We see in *Sorenson v. State*, 478 S.W.2d 532 (Tex.Crim.App. 1972) that the court found the defendant has no “reasonable expectation of privacy” in his bedroom, that his mother had a right to be in his bedroom, that his mother she could consent to the search of his bedroom and that her consent obviated the need for a search warrant. Further, the court found her consent was binding upon everyone who had rights in the bedroom.” 681 S.W.2d at 122. The United States Supreme Court has held that third party consent may be valid even if the person giving consent did not have sufficient connection to the area to be searched to give consent if the officer reasonably believes the person had control of the premises. See *Illinois v. Rodriguez*, 497 U.S. 177, 110 S.Ct. 2793, 111L.Ed.2d 148 (1990); *In the Matter of L.D.R.*, UNPUBLISHED, No. 05-92-02756-CV, 1993 WL 378086, *Juvenile Law Newsletter* 93-4-10 (Tex.App.-Dallas 1993).

School Searches: New Jersey v. T.L.O., 469 U.S.325, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985), addresses the issue of searches of juveniles and their property by public school officials on school premises. The Supreme Court concluded that different Fourth Amendment standards apply to searches on school property of students by public school officials that apply to searches by law enforcement officers. The Supreme Court held, “...the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search. Determining the reasonableness of any search involves a twofold inquiry: first, one must consider “whether the...action was justified at its inception”...; second, one must determine whether the search as actually conducted “was reasonably related in scope to the circumstances which justified the interference in the first place.” Under ordinary circumstances, a search of a student by a teacher or other school official will be “justified at its inception” when there is reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction. 105 S.Ct. at 742-43.

Locker searches- lockers remain under the jurisdiction of the school even when assigned to a student. Lockers can be searched at any time there is reasonable cause to do so, regardless of whether the student may be present. This is under the rationale of no legitimate expectation of privacy by the student.

DISPOSITION OF ARRESTED JUVENILES:

Question: While on patrol you arrest a juvenile for burglary. You cuff him and stuff him (in your car) and head toward your processing center. During the ride the juvenile tells you that this is not the first house that he has burglarized and that he wants to “fess up “to the other burglaries and take you right now to recover stolen property. What do you do?

Answer: You first take him to your juvenile processing center, because:

The law states that a person taking a juvenile into custody, without unnecessary delay and without first taking the child to any place other than a designated juvenile processing office, shall:

- 1) Release the juvenile to a parent or guardian upon that person’s promise to bring the juvenile before the juvenile court as requested by the court;
- 2) Bring the juvenile before the official designated by the juvenile court if there is probable cause to believe the juvenile engaged in delinquent conduct or CINS;
- 3) Bring the juvenile to a detention facility;
- 4) Bring the juvenile to a secure detention facility;
- 5) Bring the juvenile to a medical facility;
- 6) Dispose of the case under Section 52.03 informal disposition or first offender program.

An exception is in DWI cases, and you may take the juvenile to be processed there first.

Question: Ok, you finally make it to the processing office. Do you know how long the juvenile can be held in the processing center?

Answer: Six hours maximum before being transported to juvenile probation office or CPS custody.

Question: Once arriving at the processing center can all juveniles be locked in secure custody (doors locked and shut)?

Answer: No. Only Class “B” and above can be locked up in secure custody, otherwise the room must be unlocked and unsecured.

Section 52.027 authorizes designation of places of non-secure custody.

a) Section 52.027© specifies the characteristics:

- 1) An unlocked, multipurpose area that is not designated or used as a secure detention area.
- 2) It may be a juvenile processing office if the area is not locked when used as a place of non-secure custody.

b) Juveniles served by places of non-secure custody:

- 1) Juveniles in custody for traffic offenses;
- 2) Juveniles in custody for fineable only offenses other than public intoxication; and
- 3) Juveniles in custody as status offenders or non-offenders.

c) **Procedures for non-secure custody of juveniles:**

- 1) May not be secured physically to stationary object;
- 2) May be held only long enough to accomplish specific limited purposes;
- 3) May not be used for residential purposes; and
4. Juvenile shall be under constant visual supervision.
5. May not be held for longer than six hours.

JUVENILE CONFESSIONS:

[Show Video Tape Scenario Three Here](#)

In this scenario pay particular attention to the process for taking a custody statement from a juvenile. I will then review in more detail the process of taking statements, because this is one area that we get a lot of questions in my division from our patrol officers.

Question: Can the officer stay in the room with the magistrate while the juvenile is being warned?

Answer- yes, if requested to do so by the magistrate, usually for safety reasons.

Question: Can the officer write out the statement for the juvenile? Under what circumstances may he/she write the statement for the child?

Answer- yes, if the juvenile does not know how to write well. Also you may tape or record the confession.

Question: When does the juvenile sign the statement?

Answer- In front of the magistrate to verify they have signed voluntarily.

Applicability of Texas Family Code- only applies to the statement of a person who is a child under Title 3. A child is a person 10 years of age or older and under 17 years of age, or 17 years of age or older and under 18 who is alleged or found to have engaged in delinquent conduct or CINS as a result of acts committed before becoming 17. While this does not apply to persons arrested for class “C” offenses, remember that if in question as to what the charge may eventually be (ex. A theft arrest where the value of the stolen items is in doubt) then it is safest to question the child under 17 pursuant to 51.095 restrictions.

If child is in custody:

- 4) “Custody” defined– TFC 51.095(d)
 - a) While child is in detention facility or other place of confinement
 - b) While child is in custody of an officer, or
 - c) During or after child’s interrogation by an officer if child is in DPRS possession and is suspected of having violated penal law

- 5) 51.095 applies to written, tape recorded, and oral statements
 - a) If child is not in custody, admissibility of oral statement depends on voluntariness, not additional restrictions of 51.095(a)(2), (3), or (4)

Example:

b) Hernandez v. State (San Antonio 1996 unpub.): juvenile went to police station, told he was not under arrest, gave oral confession. Then he was taken for 51.095 warnings by magistrate. Then he signed written statement and was released. Held: juvenile was not in custody when he made his oral statement, so it was admissible and written confession was not made inadmissible b/c of previous oral confession.

Another example: Melendez v. State (San Antonio 1994): juvenile voluntarily went to station and gave confession. He had not been given Miranda warnings before making statement. Then taken to magistrate and refused to give further statement. Released to father. Held: statement admissible.

“A statement is not elicited as a result of ‘custodial interrogation’ if the statement is not taken while the defendant is in custody. Thus, an unwarned oral statement will be admissible if made by a person who voluntarily comes to the police station.”

Remember:

A person is considered in custody only if, based upon the objective circumstances, a reasonable person would believe she was restrained to the degree associated with a formal arrest. This is where many officers get confused when taking any kind of statement, not just juveniles. If the person was not restrained and knows that they can leave at any time without answering any questions chances are any statement made may be usable. The tricky part is whether or not they feel like they are being restricted in their movements.

Another example that looks like a custody case but is not:

Question: A juvenile is questioned at his home, where an oral confession is given to police. The police then took the child to the station, where they had the child sign the confession, and then brought him back home. Is this a case of custody?

Answer: No. In the matter of MAT (San Antonio 1998 unpub.): juvenile questioned at his home, oral confession given, police told family they were taking him to station where he signed written statement, and then brought him home. Held: Not in custody.

In all cases where juvenile was held not to be in custody we see that the child was told he could leave if he wished and was not in custody and the child was allowed to go home after the confession was given, and was arrested later.

If a child is not in custody: There is no need to take the child to a magistrate for statutory warnings nor read them Miranda warnings.

Written Confessions in Custody:

Prior to questioning a child in custody, a magistrate must give certain warnings to a child.

Required warnings:

TFC 51.095(a)(1)(A): Child before making statement receives from magistrate a warning that:

- a) Child may remain silent and not make any statement at all and that any statement made may be used in evidence against the child

- b) Child has right to have attorney present to advise child either before or during questioning
- c) If child cannot employ attorney, child has right to appointed counsel with child before or during any interviews with peace officers or attorneys representing state
- d) Child has right to terminate interview at any time.

51.095 requires that a judge administer the warnings because of the greater protection for the child and a neutral person to act as a buffer between the child and law enforcement.

Procedural Requirements

1. Once warned by magistrate, child may not be questioned unless he has knowingly,
2. intelligently, and voluntarily waived the rights he was informed of.
3. Waiver must be made before and during the making of the statement – 51.095(a)(1)(C)
4. Magistrate must certify in writing that child has knowingly, intelligently, and voluntarily waived these rights – 51.0-95(a)(1)(D)
5. Then if child agrees to interview without attorney, police may do so, and obtain statement
 - a) Officer may write out statement
 - b) Someone else can write it.

c) Child can write it, but the statement is not signed until in presence of magistrate. This is important to remember. Do not have the juveniles sign the statement unless done in front of judge, otherwise you have waited your time and efforts. Also remember when the magistrate does sign off on the confession he may have you leave the room. Don't take it personal, its just procedure.

Also, for a confession that is written the judge must see the child twice:

Once before questioning for the warnings and determination that the child is waiving their rights and that it is voluntary.

Then after the written statement is prepared, to determine if the child understands the contents of the statement and wants to sign it voluntarily. Many times it appears that the judge's want to talk them out of the statement, but it is really for the best to insure the statement is voluntary and will not be thrown out when and if it gets to the trail stage.

Question: Does the child have a right to notify a parent or that the parent be notified by the magistrate of an interrogation?

Answer: No. In Hardy v. State (Dallas 1995) it states that the magistrate is not required to notify a parent of interrogation even though the juvenile did not request a parent be notified. Also in Glover v. State (Houston 1996) Found that according to the Texas Family Code the police are not required to give a parent a chance to speak with a parent before interrogation. Also, Leonard v. State (Houston 1997) stated that there is no requirement that parents be present when police are questioning a child.

However: TFC 52.02(b): A person who takes child into custody must promptly give notice and reason to parent, guardian, or custodian.

- a) Failure to do so may result in exclusion of any statement given during custodial interrogation.
- b) If child is questioned in the juvenile processing office, 52.025© provides that child may not be left alone there and is entitled to have parent, guardian, custodian, or attorney present.
 1. If police prevented the parent's presence in juvenile processing office, court should suppress any statement resulting from the interrogation
 2. The law silent on police's duty, if any, to facilitate parent's presence before taking a confession.

ORAL STATEMENTS: 51.095

Oral Custodial Statements:

- 1) TFC 51.095(a): Notwithstanding provisions of 51.09, child's statement is admissible in evidence in any future proceeding concerning matter about which statement was given if:
 - a) Statement is made orally and child makes a statement of facts or circumstances that are found to be true, which conduct tends to establish child's guilt, such as finding secreted or stolen property, or instrument with which child states offense was committed,

b) Statement was res gestae of delinquent conduct or CINS,

c) Statement is made:

1. In open court at an adjudication hearing,
2. Before grand jury considering a determinate sentence petition, or
3. At a preliminary hearing concerning child, other than detention hearing.

b. Statute does not require Miranda warnings to have been given, but Texas Court of Criminal Appeals has held that constitutional law requires warnings and waiver of rights before oral statement by juvenile in custody is admissible. *Meza v. State* (1979).

c. An oral confession leading to inculpatory, physical evidence is more trust worthy than uncorroborated written confession, so there are greater procedural protections for written statements.

Physical Evidence Requirement:

- 1) Oral statement is admissible if: a) Miranda warnings and waiver requirements are met (can be given by police), and b) Must lead to inculpatory, physical evidence.
1. *Matter of RLS* (El Paso 1978): Held inadmissible an otherwise valid oral confession b/c no showing that it led police to physical evidence, which they didn't already know about.
2. *Littlefield v. State* (Beaumont 1986): Oral statement is admissible that led to recovery of stolen property and murder weapon.

3. Salazar v. State (Austin 1983): Oral statement admissible that led to recovery of stolen property

4. Williams v. State (Dallas 1997 unpub.): recorded oral statement admissible b/c it led to order laboratory tests that produced results consistent with mode child used to dispose of body 1991 amendment expanded circumstances in which oral statement is admissible in juvenile proceedings.

TFC 51.095(b)(1): confession statute does not preclude admissibility of statement given by juvenile while in custody that is not result of interrogation.

Example: In the Matter of KMC (San Antonio 1999 unpub.): juvenile suspect read Miranda rights in interrogation room and said she'd talk. Looked for magistrate, couldn't find one. Returned to interrogation room where she made unsolicited oral confession. Held: officer's actions upon return from search for magistrate where not acts likely to elicit incriminating response: removing handcuffs, giving her cigarettes, letting her go to bathroom, asking her if she needed a drink.

Tape recording a custodial statement:

Is absolutely the best method to use when taking a juvenile statement.

Authorized by CCP 38.22 in criminal cases, and in 1997, in juvenile cases

a) Criminal: peace officer or magistrate may give warnings on tape

b) Juvenile: Only magistrate may give warnings on tape

2) TFC 51.095(a)(5) – Oral statement admissible if:

a) Child is in custody and statement is made

1. In detention facility or other place of confinement,

2. In custody of officer, or

3. During or after interrogation by officer if child is in possession of DPRS and is suspected of violating penal law

b) Statement is recorded by electronic recording device, including device that records images, and

Before making an oral statement:

a. Child is warned by magistrate

b. Warning is part of recording

c. Child knowingly, intelligently, and voluntarily waives each right

1. Recording device is capable of making accurate recording

2. Operator is competent to use the device

3. Recording is accurate

4. Recording has not been altered
5. Each voice on recording is identified
7. Not later than 20th day before proceeding, child's attorney is given complete, accurate copy of each recording the child made.

Res Gestae Statements:

1. Child's oral statement is admissible if statement was res gestae of delinquent conduct or CINS, or of the arrest
2. Must be made spontaneously during or very near in time to commission of offense or the arrest
3. Like an excited utterance – reliable b/c made in excitement of moment without thought or reflection.
4. Event speaks through person without mental censoring of statement.
5. Cannot be result of interrogation.

9. PHOTOGRAPHS AND LINEUPS:

Question: Under what circumstances can you take a photograph of a juvenile?

Answer: You can take temporary custody of a child to take the child's photograph if:

- a) The officer has probable cause to believe that the child has engaged in delinquent conduct: and
- b) The officer has probable cause to believe that the photograph will be of material assistance in the investigation of that conduct.

This is a new law change effective this year, as in the past you had to have parental approval for photographs in most non-custody cases or in cases where you had an ongoing investigation. However, the new law states that the officer shall destroy the photographs if they do not lead to positive comparison or identification and shall make reasonable efforts to notify the parents, guardian or custodian of the actions taken.

Question: Is there a difference between holding an adult lineup and one in which a juvenile is involved?

Answer: No. There are no basic differences in the lineup procedure itself, although the place in which the lineup is held has to be in conformity with Section 52.025, which defines an approved juvenile processing office. Additionally it must be away from sight or sound from a place within which adults are detained, but you do not need a separate juvenile staff to conduct the lineup. The fingerprinting and photographing must be at a place where reasonable privacy is afforded or in the juvenile processing office.

However, there are few cases in which you would probably want to do a lineup, primarily because you will more than likely not be able to find willing fill-ins for the completion of the lineup.

10. FINGERPRINTING

There have also been recent changes in the law regarding fingerprinting of juvenile suspects.

Question : Do you know when it is permissible to take fingerprints from a juvenile suspected of a crime?

Answer: Under the following circumstances: Officer may take temporary custody.

- a) If the officer has probable cause to believe the child engaged in delinquent conduct;
- b) The officer has investigated that conduct and had found other fingerprints during the investigation; and
- c) The officer has probable cause to believe that the child's fingerprints will match.

As in the case of photographing juveniles the prints must be destroyed if a match does not lead to a positive identification, and in addition the officer must make reasonable efforts to notify the parents of the fingerprinting, Section 58.0021.

The fingerprinting and photographing must be at a place where reasonable privacy is afforded or in the juvenile processing office.

11. ALCOHOL BEVERAGE CODE SPECIFICS AND DUIM:

Although we have already briefly reviewed specifics relating to DWI and Intoxication and juveniles I would like to briefly review several specific laws regarding the Alcoholic Beverage Code that may help you in your job while on patrol.

These laws include:

- 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.

Under the purchase of alcohol by a minor I do not believe much needs to be said about the specifics, except that there is a provision in the law that allows for the purchase if done under police supervision, such as would be the case in a sting.

Under the attempt to purchase the minor must do more than mere preparation, but does not have to actually complete the whole transaction. Taking beer to the counter and attempting to buy is your best-case scenario in this situation.

Regarding consumption, it is an offense if the minor is seen consuming the alcoholic beverage. It is a defense if the alcohol was consumed in the presence of the minor's parent or guardian.

Possession by a minor is also self evident, however, you must remember that if they are in the presence of a parent, are being directed by a police officer engaged in enforcing the code, or if the minor is working at the establishment and the employment is not prohibited by this code.

Also, misrepresentation of age is when a minor tries to pass himself or herself off as an adult 21 years of age or older to a person selling or serving alcohol.

A violation of any part of this section of the alcoholic and beverage code is a class "C" misdemeanor as a fineable offense. However, if it is shown at the trial of the defendant that they have previously been convicted at least twice of an offense to which this section of the law applies then the offense is punishable by:

- a. A fine of not less than \$250 or more than \$2000.
- b. Confinement in jail for a term not to exceed 180 days; or
- c. Both the fine and confinement.

The court can also place the child on deferred disposition for violations of this code and be required to complete community service and can have their drivers license revoked or can be denied issuance of a driver's license. A suspension takes place 11 days after the date the minor is convicted. If convicted twice before a minor will not be eligible for receiving deferred adjudication in these matters.

Driving Under the Influence by a Minor- If you stop a minor for suspicion of DWI and he or she does not have the necessary state alcohol level of .08% needed for formal charges under the DWI provisions they can still be charged with a class “C” offense under Section 106.071. The third offense is considered delinquent conduct under Family Code Section 51.03(a)(5) when committed by a minor who is a juvenile. If your agency tracks juvenile histories you may want to check before writing a class “C” ticket under these circumstances, as the third offense will be tried as delinquent conduct.

Important Note- (Family Code 54.047) states that if a juvenile violates the alcohol related offenses, the court shall see the child performs community service and the child’s drivers license or permit will be suspended, or they will be denied issuance of a license.

12. LIABILITY OF PARENTS FOR CONDUCT OF CHILD:

We receive inquiries on a regular basis regarding the responsibilities of a parent for the conduct of a child, especially when damages are caused by the actions of a juvenile offender. Chapter 41 of the Family Code specifically addresses this concern in the following manner:

1. 41.001 states that a parent or other person who has the duty of control and reasonable discipline of a child is liable for any property damage caused by:
 - a. The negligent conduct of the child if the conduct is reasonably attributable to the negligent failure of the parent or other persons to exercise that duty.
 - b. The willful and malicious conduct of a child who is at least 12 years of age but less than 18 years of age.

2. 41.002 states that recovery of damages caused by willful and malicious conduct is limited to actual damages, not to exceed \$25,000 per occurrence, plus court costs and reasonable attorney fees.

I believe this is excellent information to have and to be able to provide to the victims of crimes such as malicious mischief when there is a suspect in custody that meets these requirements. The Family Code provides for restitution, but in order to recover the complainant would have to file a civil suit, if the parents of the responsible child refuse to make restitution. However, what can make this difficult in many cases is that the parent must be shown to also be negligent in the supervision of the child. If it can be shown, for

example, that the parent knew that the child was in violation of the curfew and then committed vandalism as a result of poor parental discipline then the case would be much stronger and stand a better chance of recovery of damages.

13. CHILD CUSTODY ISSUES:

Child custody matters, at least in Harris County, is probably one of the areas in which we receive the most calls, both from police officers as well as citizens. It is difficult in most of these cases to make everyone happy, as in most of these cases there has been knock down drag out fights over custody issues on a continuing basis.

As a general rule we treat custody issues as civil issues and attempt to get the grieved parent to try and work the matter of custody out with their lawyer's in civil court. The reality, however, is that these cases are also a violation of the criminal law also, specifically 25.03 of the Texas Penal Code.

This law states that a person commits an offense if he takes or retains a child younger than 18 years when he:

1. Knows that his taking or retention violates the express terms of a judgment or order of a court disposing of the child's custody; or
2. Has not been awarded custody of the child by a court of competent jurisdiction, knows that a suit for divorce or a civil suit or application for habeas corpus to dispose of the child's custody has been filed, and takes the child outside of the geographic area of the counties composing the judicial district if the court is a district court or the county if the court is a statutory county court, without the permission of the court and with the intent to deprive the court authority over the child.

- a. A non-custodial parent commits an offense if, with the intent to interfere with the lawful custody of a child younger than 18 years, he knowingly entices or persuades the child to leave the custody of the custodial parent, guardian, or person standing in the stead of the custodial parent or guardian of the child.

- b. It is a defense to prosecution under subsection (a) 2 that the actor returned the child to the geographic area of the counties composing the judicial district if the court is a district court or the county if the court is a statutory county court, within three days after the date of the commission of the offense.

14. EDUCATION CODE

Although the Houston Police Department does not by general order of the Chief of Police enforce the education code I know that many of you who are assigned to patrol duties may be responsible for enforcing these laws if asked to do so by your local school districts.

Compulsory attendance basics:

Chapter 25 of the education code states that a child who is at least six years of age and has not reached their 18th birthday shall attend school. There are exemptions, such as private schools, physical or mental conditions, has been expelled from school, is at least 17 years of age and is seeking a high school equivalency (must be attending a course of instruction for preparation for test), or has already received a high school equivalency.

25.094- Failure to attend school- commits an offense if the child is absent (unexcused) 10 or more days without consent of his/her parents, within a six month period, or three or more days within a four week period (the time limits are under 51.03 (B) (2) of the Family Code). An offense is a class “C” misdemeanor.

25.093- Thwarting compulsory attendance law- the parents must first receive a warning by the school attendance officer. If after the first warning the parent does not comply, then they are in violation and can be filed upon in a court of proper jurisdiction. The offense is a Class “C” misdemeanor. The attendance records of the

child can be used in trial, and probably should be used, to establish responsibility. The parent can also be forced by the court to take a class to help them identify the problems that contribute to the students absence and to develop strategies to resolve those problems, if the school district offers such classes.

37.124- Disruption of classes- A person commits an offense if the person, on school property or on public property within 500 feet of school property, alone or with others, intentionally disrupts the conduct of classes or other school activities. A violation is a Class “C” misdemeanor, and an offense constitutes:

- a. Emitting a noise of an intensity that prevents or hinders classroom instruction;
- b. Enticing or attempting to entice a child away from classes;
- c. Preventing the child from attending class or other school activity;
- d. Entering a classroom without consent of the principle or teacher and through either acts of misconduct or the use of loud or profane language disrupts class activities.

37.126-Disruption of transportation- commits an offense if the person intentionally disrupts, prevents, or interferes with the lawful transportation of children to or from school or an activity sponsored by the school. Violation is a Class “C” misdemeanor.

37.125- Exhibition of firearms- a person commits an offense if the person, by exhibiting, using, or threatening to exhibit or use a firearm, interferes with the normal use of a building or portion of a campus or of a school bus being used to transport children to or from school sponsored activities of a private or public school. An offense is considered a third degree felony.

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