TITLE 3. DELINQUENT CHILDREN AND CHILDREN IN NEED OF SUPERVISION

Commentary by Senator Ray Farabee and Mel Hazlewood***

§ 51.12. Place and Conditions of Detention

(a) Except after transfer to criminal court for prosecution under Section 54.02 of this code, a child shall not be detained in or committed to a compartment of a jail or lockup in which adults arrested for, charged with, or convicted of crime are detained or committed, nor be permitted contact with such persons.

(b) The proper authorities in each county shall provide a suitable place of detention for children who are parties to proceedings under this title, but the juvenile court shall control the conditions and terms of detention and detention supervision and shall permit visitation with the child at all reasonable times.

(c) In each county, the judge of the juvenile court and the members of the juvenile board shall personally inspect the detention facilities at least annually and shall certify in writing to the authorities responsible for operating and giving financial support to the facilities that they are suitable or unsuitable for the detention of children in accordance with:

(1) the requirements of Subsection (a) of this section;

(2) the requirements of Article 5115, Revised Civil Statutes of Texas, 1925, as amended, defining 'safe and suitable jails,' if the detention facility is a county jail; and

(3) recognized professional standards for the detention of children deemed appropriate by the board, which may include minimum standards promulgated by the Texas Juvenile Probation Commission. The juvenile board shall annually provide to the Texas Juvenile Probation Commission a copy of the standards used under this section.

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(d) No child shall be placed in a facility that has not been certified under Subsection (c) of this section as suitable for the detention of children. A child detained in a facility that has not been certified under Subsection (c) of this section as suitable for the detention of children shall be entitled to immediate release from custody in that facility.

(e) If there is no certified place of detention in the county in which the petition is filed, the designated place of detention may be in another county.

Commentary

Subsection 51.12(c) was amended to lessen arbitrary certification of juvenile detention facilities, establish some statewide uniformity in facility standards, and increase Texas' compliance with federal detention mandates. This is a tall order for language added at the very end of the subsection that merely allows juvenile boards to consider standards adopted by the juvenile Probation Commission as the appropriate professional detention standard. Additional language directs those boards to provide the Commission annually a copy of whichever standards are ultimately used in the required certification process. A necessary conforming amendment to Human Resources Code section 75.041 empowers the Commission to establish minimum detention standards. Certain qualifying language to the requirement that the inspection be done by the juvenile board, "if there is one," was also deleted to conform to a 1983 bill establishing a board in each county.[1] All other prior language was retained.

The facility amendments were supported by a board coalition of groups ranging from the United Way to the Texas Probation Association. Their primary concern was the ambiguity of prior language: there was no one set of "recognized" professional standards that could be followed. This led to both certification without any standards being used and inherent disparities in the quality of facilities. An additional concern of primacy to legislators was the need to comply with the Juvenile Justice and Delinquency Prevention Act.[2] That

1. *See* TEX. REV. CIV. STAT. ANN. art. 5139.1 (Vernon Pamph. Supp. 1986) (added by Act of May 3, 1983, 68th Leg., ch. 59, §§ 1-8, 1983 Tex. Gen. Laws 289, 289-92).

2. Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, 88 Stat. 1109, *amended by* Juvenile Justice, Runaway Youth, and Missing Children's Act Amendments of 1984, Pub. L. No. 98-473, §§ 610-670, 98 Stat. 1837, 2107-29 (codified at 42 U.S.C. §§ 5601-5777 (1982 & West Supp. 1985)).

act requires, among other things, the "sight-and-sound" separation of juveniles from adults when both are held in the same facility.[3] Although all professional standards include the separation provision in their ambit, and Texas explicitly requires it in subsection (a) of this section, several Texas facilities were allegedly being certified without heed to this prohibition. The involvement of the Juvenile Probation Commission is an attempt to allow the state to ascertain the extent of the problem and begin to address it. It should be added that those counties not complying with state and federal law in this area are subject to possible civil liability.[4]

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§ 51.14. Files and Records

(a) All files and records of a juvenile court, a clerk of court, or a prosecuting attorney relating to a child who is a party to a proceeding under this title are open to inspection only by:

(1) the judge, probation officers, and professional staff or consultants of the juvenile court;

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

(3) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or

(4) with leave of juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

(b) All files and records of a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court are open to inspection only by:

(1) the professional staff or consultants of the agency or institutions;

(2) the judge, probation officers, and professional staff or consultants of the juvenile court;

(3) an attorney for the child;

(4) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the work of the agency or institution; or

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3. *See* 42 U.S.C. § 5633(a)(10)-(14) (1982 & West Supp. 1985); 28 C.F.R. § 31.303(d)-(e) (1985).

4. *See* D.B. v. Tewksbury, 545 F. Supp. 896 (D. Or. 1982).

(5) the Texas Department of Corrections, for the purpose of maintaining statistical records of recidivism, and for diagnosis and classification.

(c) Law-enforcement files and records concerning a child shall be kept separate from files and records of arrests of adults and shall be maintained on a local basis only and not sent to a central state or federal depository.

(d) Except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

(1) a juvenile court having the child before it in any proceeding;

(2) an attorney for a party to the proceeding; and

(3) law-enforcement officers when necessary for the discharge of their official duties.

Commentary

Subsection (b)(5) was added in 1983 as part of a general legislative policy thrust to increase coordination among criminal justice agencies, improve statistics and record-keeping in the system, and provide more information on inmates sentenced to the Department of Corrections. It also breaches the decade-long intent of section 51.14, as well as the belief of many, that information concerning juvenile must be kept strictly within the juvenile system except under circumstances that will provide no basis for identification of the offender. Three prior Attorney General opinions had affirmed this intent.[5]

The provision allowing records inspections by the Department of Corrections is narrowly drawn, but is intended expressly to provide information on individual offenders. Prior to passage of the legislation, offenders were transported to prison with only a judgment and sentence in hand. No individualized information on past social and criminal history were either kept or sought by the Department, nor

5. *See* Op. Tex. Att'y Gen. Nos. MW-359 (1981) (local probation departments may share confidential information with other agencies having responsibility for a child), JH-660 (1975) (legislative committee could receive agency information under proper circumstances limiting use and distribution), JH-529 (1975) (Department of Public Safety could receive general statistical information if the statistics provided no basis for identifying individual offenders).

were any statistics on recidivism maintained. Increasing costs of incarceration, the need to address suspected high recidivism rates, and a federal court order requiring an improved classification plan[6] necessitated changes in this lock-em-up, know-nothing-else policy.

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§ 53.03. Intake Conference and Adjustment

(a) If the preliminary investigation required by Section 53.01 of this code results in a determination that further proceedings in the case are authorized and warranted, the probation officer or other designated officer of the court, subject to the direction of the juvenile court, may advise the parties for a reasonable period of time not to exceed six months concerning an informal adjustment and voluntary rehabilitation of a child if:

(1) advice without a court hearing would be in the interest of the public and the child;

(2) the child and his parent, guardian, or custodian consent with knowledge that consent is not obligatory; and

(3) the child and his parent, guardian, or custodian are informed that they may terminate the adjustment process at any point and petition the court for a court hearing in the case.

(b) Except as otherwise permitted by this title, the child may not be detained during or as a result of the adjustment process.

(c) An incriminating statement made by a participant to the person giving advice and in the discussions or conferences incident thereto may not be used against the declarant in any court hearing.

(d) An informal adjustment authorized by this section may involve:

(1) voluntary restitution by the child or his parent to the victim of an offense; or

(2) voluntary community service restitution by the child.

Commentary

New subsection (d) was adopted as part of a major bill designed to increase the use of juvenile restitution programs. The amendment

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6. *See generally* Ruiz v. Estelle, 503 F. Supp. 1265, 1385-90 (S.D. Tex. 1980) (landmark case ordering major reforms in Texas correctional system), *aff'd in part, rev'd in part*, 679 F.2d 1115 (5th Cir. 1982), *modified*, 688 F.2d 266 (5th Cir. 1982), *cert. denied*, 460 U.S. 1042 (1983).

recognized a fact ignored when those programs were first authorized in 1979: most dispositions are done through this informal adjustment section. The 1984 Annual Report of the Juvenile Probation Commission states that 72 percent of the juvenile caseload was diverted informally prior to initiation of any court proceedings. The vast majority of juvenile referrals will now be able to participate in restitution programs, which are generally recognized by correctional experts as the most important component of a realistic rehabilitation scheme.

The spread of restitution programs, particularly those with a community service component, was also slowed by nagging liability questions. Basically, counties and other political subdivisions were hesitant to begin charitable work programs out of fear that they would be held liable for injuries either to the juvenile or to others. The bill addressed this by amending article 8309h, section 1(2) of the Revised Statutes to allow political subdivisions of the state to purchase workers' compensation coverage for participating juveniles. It also amended Family Code sections 54.04 and 54.041 as discussed below to further encourage restitution.[7]

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§ 54.03. Adjudication Hearing

(a) A child may be found to have engaged in delinquent conduct or conduct indicating a need for supervision only after an adjudication hearing conducted in accordance with the provisions of this section.

(b) At the beginning of the adjudication hearing, the juvenile court judge shall explain to the child and his parent, guardian, or guardian ad litem:

(1) the allegations made against the child;

(2) the nature and possible consequences of the proceedings;

(3) the child's privilege against self-incrimination;

(4) the child's right to trial and to confrontation of witnesses;

(5) the child's right to representation by an attorney if he is not already represented; and

(6) the child's right to trial by jury.

(c) Trial shall be by jury unless jury is waived in accordance

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7. *See infra* Commentary accompanying sections 54.04 and 54.041.

with Section 51.09 of this code. Jury verdicts under this title must be unanimous.

(d) Except as provided by Section 54.031 of this chapter, only material, relevant, and competent evidence in accordance with the requirements for the trial of civil cases may be considered in the adjudication hearing. Except in a detention or discretionary transfer hearing, a social history report or social service file shall not be viewed by the court before the adjudication decision and shall not be viewed by the jury at any time.

(e) A child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision need not be a witness against nor otherwise incriminate himself. An extrajudicial statement which was obtained without fulfilling the requirements of this title or of the constitution of this state or the United States, may not be used in an adjudication hearing. A statement made by the child out of court is insufficient to support a finding of delinquent conduct or conduct indicating a need for supervision unless it is corroborated in whole or in part by other evidence. An adjudication of delinquent conduct or conduct indicating a need for supervision cannot be had upon the testimony of an accomplice unless corroborated by other evidence tending to connect the child with the alleged delinquent conduct or conduct indicating a need for supervision; and the corroboration is not sufficient if it merely shows the commission of the alleged conduct. Evidence illegally seized or obtained is inadmissible in an adjudication hearing.

(f) At the conclusion of the adjudication hearing, the court or jury shall find whether or not the child has engaged in delinquent conduct or conduct indicating a need for supervision. The finding must be based on competent evidence admitted at the hearing. The child shall be presumed to be innocent of the charges against him and no finding that a child has engaged in delinquent conduct or conduct indicating a need for supervision may be returned unless the state has proved such beyond a reasonable doubt. In all jury cases the jury will be instructed that the burden is on the state to prove that a child has engaged in delinquent conduct or is in need of supervision beyond a reasonable doubt.

(g) If the court or jury finds that the child did not engage in delinquent conduct or conduct indicating a need for supervision, the court shall dismiss the case with prejudice.

(h) If the finding is that the child did engage in delinquent con-

duct or conduct indicating a need for supervision, the court or jury shall state which of the allegations in the petition were found to be established by the evidence. The court shall also set a date and time for the disposition hearing.

Commentary

The only change to this section was an amendment conforming subsection (d) to the provisions of new section 54.031.[8] That section creates an exception to the hearsay rule in child abuse cases subject to certain conditions and requirements. The new language here will allow statements found admissible under section 54.031 to be introduced in adjudication hearings. It is a different question as to whether such evidence can be considered in other types of hearings authorized under chapter 54: detention, transfer, disposition, and modification of disposition.[9] The specific question of the applicability of evidence admissible under subsection (d) to these hearings has never been faced by a court. The presence of the second sentence of the subsection referring explicitly to detention and transfer hearings and implicitly to the other types of hearings does indicate a legislative intent that this subsection control evidence admissibility for all chapter 54 hearings. The legislative history of the bill creating the hearsay exception does not shed any light on the question, but it is likely to be confronted in some future transfer hearing given the increasing prosecutorial pursuit of child abuse cases, particularly those alleging sexual abuse. It is also a ripe area for legislative clarification.

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§ 54.031. Hearsay Statement Of Child Abuse Victim

(a) This section applies to a hearing under this title in which a child is alleged to be a delinquent child on the basis of a violation of any of the following provisions of the Penal Code, if a child 12 years of age or younger is the alleged victim of the violation:

(1) Chapter 21 (Sexual Offenses) or 22 (Assaultive Offenses);

(2) Section 25.02 (Incest);

(3) Section 25.06 (Solicitation of a Child; added by Chapter 413, Acts of the 65th Legislature, Regular Session, 1977); or

8. *See infra* Commentary accompanying section 54.031.

9. *See* TEX. FAM. CODE ANN. §§ 54.01-.05 (Vernon 1975 & Pamph. Supp. 1986).

(4) Section 43.25 (Sexual Performance by a Child).

(b) This section applies only to statements that describe the alleged violation that:

(1) were made by the child who is the alleged victim of the violation; and

(2) were made to the first person, 18 years of age or older, to whom the child made a statement about the violation.

(c) A statement that meets the requirements of Subsection (b) of this section is not inadmissible because of the hearsay rule if:

(1) on or before the 14th day before the date the hearing begins, the party intending to offer the statement:

(A) notifies each other party of its intention to do so;

(B) provides each other party with the name of the witness through whom it intends to offer the statement; and

(C) provides each other party with a written summary of the statement;

(2) the juvenile court finds, in a hearing conducted outside the presence of the jury, that the statement is reliable based on the time, content, and circumstances of the statement; and

(3) the child who is the alleged victim testifies or is available to testify at the hearing in court or in any other manner provided by law.

Commentary

This new section results from increasing public concerns over the difficulty of proving and obtaining convictions in child abuse cases, particularly those involving sexual abuse. It creates an exception to the hearsay rule by allowing admission into evidence of a statement made by a child less than 13 years of age who is allegedly the victim of one of the offenses enumerated in subsection (a), if the requirements and conditions of subsections (b) and (c) are met. The original version of the bill would have allowed admissibility of all statements made concerning the offense, but the final version is restricted to those statements made to the first adult. The last provision of subsection (c), that the child testifies or be available to do so, conforms with the confrontation clauses of the United States and Texas Constitutions.

The bill creating this section also added article 38.072 to the Code of Criminal Procedure to put identical language in that Code allowing admissibility of the same types of statements, and under the same requirements and conditions, in criminal cases. The bill also

amended Family Code section 54.03(d) to allow statements found admissible under this section to be introduced in adjudication hearings and, arguably, all chapter 54 hearings. The concern over the applicability of section 54.03(d) to all chapter 54 hearings is more than an interesting philosophical point: the interplay of these sections may lead to the anomalous result that the state could introduce evidence admissible under Code of Criminal Procedure article 38.072 in an adult proceeding against a juvenile, but could not do so in the preceding hearing to transfer to adult court.

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§ 54.04. Disposition Hearing

(a) The disposition hearing shall be separate, distinct, and subsequent to the adjudication hearing. There is no right to a jury at the disposition hearing.

(b) At the disposition hearing, the juvenile court may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses. Prior to the disposition hearing, the court shall provide the attorney for the child with access to all written matter to be considered by the court in disposition. The court may order counsel not to reveal items to the child or his parent, guardian, or guardian ad litem if such disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future.

(c) No disposition may be made under this section unless the court finds that the child is in need of rehabilitation or that the protection of the public or the child requires that disposition be made. If the court does not so find, it shall dismiss the child and enter a final judgment without any disposition.

(d) If the court makes the finding specified in Subsection (c) of this section, it may:

(1) place the child on probation on such reasonable and lawful terms as the court may determine for a period not to exceed one year, subject to extensions not to exceed one year each:

(A) in his own home or in the custody of a relative or other fit person;

(B) in a suitable foster home; or

(C) in a suitable public or private institution or agency, except the Texas Youth Commission; and

(D) the juvenile court, on notice to the child and on hearing, may order the child to make full or partial restitution to the victim of the offense according to the provisions of Subsection (b), Section 54.041, Family Code.

(2) if the court or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct, the court may commit the child to the Texas Youth Commission.

(e) The Texas Youth Commission shall accept a child properly committed to it by a juvenile court even though the child may be 17 years of age or older at the time of commitment.

(f) The court shall state specifically in the order its reasons for the disposition and shall furnish a copy of the order to the child. If the child is placed on probation, the terms of probation shall be written in the order.

(g) Repealed by Acts 1975, 64th Leg., p. 2158, ch. 693, § 23, eff. Sept. 1, 1975.

(h) At the conclusion of the dispositional hearing, the court shall inform the child of his right to appeal, as required by Section 56.01 of this code.

Commentary

The amendment to this section was part of the juvenile restitution bill.[10] It continues prior law in effect concerning the power of the judge to order restitution when a child is placed on probation under this subsection (d), but makes that authority subject to the provisions of section 54.041(b). The two sections had previously conflicted in that judges putting a child on probation could order restitution to extend to age 23 and could also include payment for personal injuries within the order. Meanwhile, judges ordering restitution under section 54.041(b) could not use either option. The legislature split the difference; payments can now be ordered for personal injury loss, but can only extend to the eighteenth birthday of the child. Community service and property damage restitution are continued as options in section 54.041, and are subject to the same age restrictions as personal injury restitution. The same bill also amended Family Code section 53.03 to allow restitution as an informal adjustment alternative, and article 8309h, section 1 (2) of the Revised Civil Statutes to solve liabil-

10. Act of June 19, 1983, ch. 565, § 2, 1983 Tex. Gen. Laws 3260, 3261-62.

ity concerns hindering expansion of restitution programs.[11]

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§ 54.041. Orders Affecting Parents and Others

(a) When a child has been found to have engaged in delinquent conduct or conduct indicating a need for supervision and the juvenile court has made a finding that the child is in need of rehabilitation or that the protection of the public or the child requires that disposition be made, the juvenile court, on notice by any reasonble method to all persons affected, may:

(1) order any person found by the juvenile court to have, by a wilful act or omission, contributed to, caused, or encouraged the child's delinquent conduct or conduct indicating a need for supervision to do any act that the juvenile court determines to be reasonable and necessary for the welfare of the child or to refrain from doing any act that the juvenile court determines to be injurious to the welfare of the child;

(2) enjoin all contact between the child and a person who is found to be a contributing cause of the child's delinquent conduct or conduct indicating a need for supervision; or

(3) after notice and a hearing of all persons affected order any person living in the same household with the child to participate in social or psychological counseling to assist in the rehabilitation of the child and to strengthen the child's family environment.

(b) If a child is found to have engaged in delinquent conduct arising from the commission of an offense in which property damages or loss or personal injury occurred, the juvenile court, on notice to all persons affected and on hearing, may order the child or a parent to make full or partial resitution to the victim of the offense. The program of restitution must promote the rehabilitation of the child, be appropriate to the age and physical, emotional, and mental abilities of the child, and not conflict with the child's schooling. When practicable and subject to court supervision, the court may approve a restitution program based on a settlement between the child and the victim of the offense. An order under this subsection may provide for periodic payments by the child or a parent of the child for the period specified in the order but that period may not extend past the 18th

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11. *Id.* § 1, 1983 Tex. Gen. Laws at 3261; *see id.* § 4, 1983 Tex. Gen. Laws at 3264-65.

birthday of the child. If the child or parent is unable to make full or partial restitution or if a restitution order is not appropriate under the circumstances, the court may order the child to render personal services to a charitable or educational institution in the manner prescribed in the court order in lieu of restitution. Restitution under this section is cumulative of any other remedy allowed by law and may be used in addition to other remedies; except that a victim of an offense is not entitled to receive more the actual damages under a juvenile court order. A city, town, or county that establishes a program to assist children in rendering personal services to a charitable or educational institution as authorized by this subsection may purchase insurance policies protecting the city, town, or county against claims brought by a person other than the child for a cause of action that arises from an act of the child while rendering those services. The city, town, or county is not liable under this Act to the extent that damages are recoverable under a contract of insurance or under a plan of self-insurance authorized by statute. The liability of the city, town, or county for a cause of action that arises from an action of the child while rendering those services may not exceed $100,000 to a single person and $300,000 for a single occurrence in the case of personal injury or death, and $10,000 for a single occurrence of property damage. Liability may not extend to punitive or exemplary damages. This subsection does not waive a defense, immunity, or jurisdictional bar available to the city, town, or county or its officers or employees, nor shall this Act be construed to waive, repeal, or modify any provision of the Texas Tort Claims Act, as amended (Article 6252-19, Vernon's Texas Civil Statutes) [now codified at Chapter 101, Texas Civil Practice and Remedies Code-Eds.].

(c) A person subject to an order proposed under Subsection (a) of this section is entitled to a hearing on the order before the order is entered by the court.

(d) An order made under this section may be enforced as provided by Section 54.07 of this code.

Commentary

Several changes to this section were made by two different pieces of legislation. One, Senate Bill 669,[12] amended subsection (a) to clarify that there is no need for formal citation in cases arising under this

12. Act of June 19, 1983, ch. 565, § 3, 1983 Tex. Gen. Laws 3260, 3262-64.

section and subsection (b) to resolve certain questions concerning restitution programs and consider liability for the tortious acts of those in the programs. The other, Senate Bill 99,[13] amended subsection (a)(3) to allow the judge to order any person living in the same house as the juvenile to participate in counseling if it assists in rehabilitation of the child or strengthens the home environment.

When section 54.041 was first adopted by the legislature in 1975, it only allowed courts to enjoin harmful contacts between a juvenile found delinquent or in need of supervision and any persons found to be a "contributing cause" of the conduct.[14] The gradual expansion of this section indicates increasing recognition that parents and others often share in a child's problems and must also share in their solution. The "sharing" concept now extends well beyond the original injunctive powers to give courts clear, broad discretion over any person found to directly affect the child's conduct or welfare.

The amendments by Senate Bill 669 clarify discrepancies between sections 54.04 and 54.041 concerning court power to order personal injury restitution and to extend any restitution order beyond age 18. The provisions of section 54.041 now control, with the court being able to order the child or parents to make restitution payments for personal injury or property damage until the child reaches 18. As under prior law, the court may also order community service restitution. Expansion of these programs is sought by new language in subsection (b) authorizing political subdivisions to provide insurance for injuries caused by children participating in such programs as well as placing various limitations upon liability of the subdivisions. Many counties were hesitant to establish programs without such provisions. A related change amends article 8309h, section 1(2), Revised Civil Statutes to allow the same entities to purchase workers' compensation insurance for juveniles participating in restitution programs.[15]

The amendment by Senate Bill 99 was more a clarifying matter than an expansion of law. Subsection (a)(1) was added in 1979 to give courts the authority to order anyone affecting the child's conduct in the case at hand to do anything reasonable and necessary for the child's welfare or to refrain from doing any act injurious to that wel-

13. Act of May 17, 1983, ch. 110, § 1, 1983 Tex. Gen. Laws 528, 528.

14. *See* Act of June 21, 1975, ch. 693, § 18, 1975 Tex. Gen. Laws 2152, 2157; Dawson, *Texas Family Code Symposium Supplement— Title 3. Delinquent Children and Children In Need of Supervision*, 8 TEX. TECH L. REV. 119, 150 (1976).

15. Act of June 19, 1983, ch. 565, § 4, 1983 Tex. Gen. Laws 3260, 3264-65.

fare.[16] This presumably included ordering counseling for those living in the same household as the child. Some judges disagreed, preferring that power to be explicitly stated.

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§ 54.042. License Suspension

(a) A juvenile court, in a disposition hearing under Section 54.04 of this code, shall order the Department of Public Safety to suspend a child's driver's license or permit, or if the child does not have a license or permit, to deny the issuance of a license or permit to the child if the court finds that the child has engaged in conduct that violates the laws of this state prohibiting:

(1) driving while intoxicated under Article 6701*l*-1, Revised Statutes; or

(2) the use, possession, manufacture, or delivery of a controlled substance or marihuana under the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

(b) The order shall specify a period of suspension or denial that is:

(1) until the child reaches the age of 17 or for a period of 365 days, whichever is longer; or

(2) if the court finds that the child has engaged in conduct violating the laws of this state prohibiting driving while intoxicated under Article 6701l-1, Revised Statutes, and also determines that the child has previously been found to have engaged in conduct violating the same laws, until the child reaches the age of 19 or for a period of 365 days, whichever is longer.

(c) A child whose driver's license or permit has been suspended or denied pursuant to this section may, if the child is otherwise eligible for, and fulfils the requirements for issuance of, a provisional driver's license or permit under Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes), apply for and receive an occupational license in accordance with the provisions of Section 23A, Chapter 173, Acts of the 47th Legislature, Regualr Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes).

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16. *See* Act of May 11, 1979, ch. 154, § 2, 1979 Tex. Gen. Laws 338, 338-39.

Commentary

This section was added in 1983 by the omnibus D.W.I. bill, Senate Bill 1.[17] It originally dealt only with suspension of the operator's license of a child adjudicated to have driven while intoxicated. The 1985 amendment adds several offenses for which a license may be suspended: public intoxication; purchase, sale, or consumption of alcoholic beverages; and, use, possession, sale, or delivery of a controlled substance or marihuana. The 1983 bill also provided that the license suspension be for a period of between 90 and 365 days for the first offense, while the 1985 amendments provide that the suspension be for 365 days or until the child reaches 18 years of age, whichever is longer. If the child is adjudicated to have committed the same offense on two or more occasions, the suspension period is the same under both laws: until the child reaches the age at which he can legally purchase alcoholic beverages (now 19, but 21 effective September 1, 1986) or for 365 days, whichever is longer.

The 1985 legislation also removed a provision allowing the court to suspend its finding for first offenders if the juvenile attended and completed an alcohol education program. Instead, the court is allowed to issue an occupational license under the provisions of subsection (c). It should be noted that the 1983 law is continued in effect for offenses occurring before September 1, 1985.

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§ 54.05. Hearing to Modify Disposition

(a) Any disposition, except a commitment to the Texas Youth Commission, may be modified by the juvenile court as provided in this section until:

(1) the child reaches his 18th birthday; or

(2) the child is earlier discharged by the court or operation of law.

(b) Except for a commitment to the Texas Youth Commission, all dispositions automatically terminate when the child reaches his 18th birthday.

(c) There is no right to a jury at a hearing to modify dispositon.

(d) A hearing to modify disposition shall be held on the petition of the child and his parent, guardian, guardian ad litem, or attorney,

17. Act of June 16, 1983, ch. 303, § 25, 1983 Tex. Gen. Laws 1568, 1605-06.

or on the petition of the state, a probation officer, or the court itself. Reasonable notice of a hearing to modify disposition shall be given to all parties. When the petition to modify is filed under Section 51.03(a)(2) of this code, the court must hold an adjudication hearing and make an affirmative finding prior to considering any written reports under Subsection (e) of this section.

(e) After the hearing on the merits or facts, the court may consider written reports from probation offciers, professional court employees, or professional consultants in addition to the testimony of other witnesses. Prior to the hearing to modify dispositon, the court shall provide the attorney for the child with access to all written matter to be considered by the court in deciding whether to modify disposition. The court may order counsel not to reveal items to the child or his parent, guardian, or guardian ad litem if such disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future.

(f) A disposition based on a finding that the child engaged in delinquent conduct may be modified so as to commit the child to the Texas Youth Commission if the court after a hearing to modify disposition finds beyond a reasonable doubt that the child violated a reasonble and lawful order of the court.

(g) A disposition based solely on a finding that the child engaged in conduct indicating a need for supervision may not be modified to commit the child to the Texas Youth Commission. A new finding in compliance with Section 54.03 of this code must be made that the child engaged in delinquent conduct as defined in Section 51.03(a) of this code.

(h) A hearing shall be held prior to commitment to the Texas Youth Commission as a modified disposition. In other disposition modifications, the child and his parent, guardian, guardian al litem, or attorney may waive hearing in accordance with Section 51.09 of this code.

(i) The court shall specifically state in the order its reasons for modifying the disposition and shall furnish the copy of the order to the child.

Commentary

Prior to the passage of Title 3 in 1973, applicable law provided

that all juvenile court dispositions, including those to what is now the Texas Youth Commission, extended to age 21.[18] The passage of Title 3 occurred in the same year as the general policy shift of making 18 the age of majority. Among the numerous changes to other statutes relating to the age of majority, the Title 3 legislation was altered to provide that all dispositions end at age 18.[19] The pendulum is now swinging back as reflected by a 1985 amendment to subsection (b) making an exception to the 18 years of age rule for persons committed to the Youth Commission. Conforming amendments to Human Resources Code sections 61.001(5) and 61.084 provide that delinquent children include those under 21 years of age committed to the Commission under Title 3 of the Family Code and that the Commission shall discharge any offenders when they reach age 21.[20] All commitments other than those to the Commission will still end at 18.

The reasons behind the change are two related policy concerns: treatment of older juveniles who have committed a serious crime, and a legislative desire to avoid determinate sentencing of juveniles. Presently, 15 or 16 year olds committing serious crimes are either tried in the juvenile system or transferred to the adult system. In the former instance, they will be released from court jurisdiction by age 18. It is thought that this often leads to premature discharge of the child. In the transfer instance, the case is often dismissed, again leading to the same result. Many bills have been introduced over the past few sessions to avoid these results by allowing to sentence juvenile delinquents to a determinate sentence, with transfer to adult facilities if the sentence is not completed by age 18. These bills have failed because of concerns over the costs of building new juvenile facilities and questions over the constitutionality of transferring one adjudicated in the juvenile system to an adult prison. The mid-point is reflected in these amendments—allow the Commission to decide who should be kept past age 18 with mandatory discharge at age 21.

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18. *See* Act of June 17, 1965, ch. 577, § 2, 1965 Tex. Gen. Laws 1256, 1256-57, *repealed by* Act of June 16, 1973, ch. 544, § 3, 1973 Tex. Gen. Laws 1460, 1485; Act of May 1, 1943, ch. 204, § 13, 1943 Tex. Gen. Laws 313, 316-17, *repealed by* Act of June 16, 1973, ch. 544, § 3, 1973 Tex. Gen. Laws 1460, 1485.

19. *See* Act of June 16, 1973, ch. 544, § 1, 1973 Tex. Gen. Laws 1460, 1479 (enacting § 54.05(b) of the Family Code, stating that "[a]ll dispositions automatically terminate when the child reaches his 18th birthday.").

20. *See* TEX. HUM. RES. CODE ANN. §§ 61.001(5), 61.084 (Vernon Supp. 1986).