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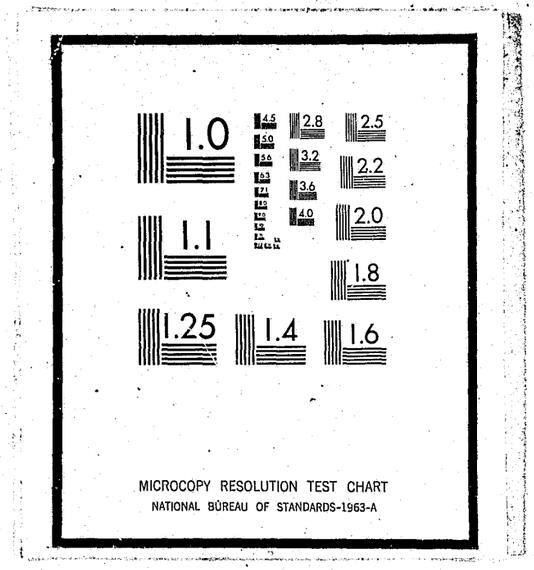

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U.S. DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE
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TEXAS JUVENILE JUSTICE CONFERENCE REPORT 1974

Edited by
Libby Bertinot

Sponsored by
The Texas Probation Training Project
Institute of Contemporary Corrections and
the Behavioral Sciences
Sam Houston State University
and
The Texas Center for the Judiciary
State Bar of Texas

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FORWARD

The Texas Juvenile Justice Conference was held in Austin, January 31 and February 1, 1974, by the Texas Probation Training Project of Sam Houston State University and the Texas Center for the Judiciary. Participants in the conference included fifty juvenile court judges and one hundred one juvenile probation directors.

The purpose of the conference was to gain a better understanding of Title III of the new Family Code. Speakers, panels, and small group discussion were used in the format.

Dr. Robert Dawson, University of Texas law professor and one of the drafters of Title III, began the program Thursday by speaking to a joint session of judges and probation officers with a discussion of some relevant issues in Title III.

Small task groups composed of judges and probation officers presented questions to composite panels, made up of judges, policemen, attorneys, and members of the Attorney General's office. The participants also worked in four separate groups which were divided according to department and county size so that the directors and judges could discuss their problems with other directors and judges from similar situations.

The membership of the panels reflected the membership of the groups raising the questions. Groups from large size departments asked questions of panel members from large size departments and group members from rural areas asked questions of panel members who were from the rural areas themselves.

That evening one of the groups worked on probation guidelines while the other three groups participated in an in-basket exercise. This exercise involved making everyday work decisions related to the new code.

At the same time the judges held a questions and answer session with one of the authors of the Family Code, Professor Bob Dawson. Detention hearings were held for each of the groups and the judges. They were worked out by the participants with the help of Mr. Ray Grill, Austin; Mr. Maurice Westerfeld, Houston; Mr. Richard Hatch, Sinton; and Judge Woody Pond, Canyon, Texas.

Assisting in the groups were training directors from probation departments in Houston, Beaumont, San Antonio, Wichita Falls, Austin, and Edinburg.

FORWARD (cont.)

The state conference objectives were:

To offer presentations by experts who helped write the code concerning legal and procedural implications of the new Family Code (Title III).

To offer a situation where various components of the Criminal Justice System will engage in discussion with a spirit of cooperation and inquiry.

To offer probation directors an opportunity for informal discussion and exchange of ideas with each other and with judges of the Juvenile Court System.

To offer the opportunity to develop probation procedures and receive expert advice on their legality.

To offer an opportunity for participants to develop informational materials for use back home, which includes training materials and guidelines.

The 101 probation directors and assistant directors represented virtually every juvenile probation department in the state.

Libby Bertinot
Conference Manager
Texas Juvenile Justice Conference

This conference was made possible through a special grant entitled "Juvenile Code Conference for Chief Probation Officers" funded by the Criminal Justice Council.

ACKNOWLEDGEMENTS

We wish to thank all the speakers and panelists at the Texas Juvenile Justice Conference for the time and knowledge they contributed toward making the conference successful. Listed below are all contributors.

Speakers

Mr. Bob Dawson
Law Professor
The University of Texas
Austin, Texas

Mr. Max Flusche
Assistant Attorney General
Attorney General's Office
Austin, Texas

The Hon. Joe Dibrell
Chief, Enforcement Division
Attorney General's Office
Austin, Texas

Mr. Ron Jackson
Executive Director
Texas Youth Council
Austin, Texas

Mr. Ned Miller
Program Coordinator Corrections Section
Criminal Justice Division
Office of the Governor
Austin, Texas

Panelists

Mr. Max Flusche
Assistant Attorney General
Attorney General's Office
Austin, Texas

The Hon. Joe Dibrell
Chief, Enforcement Division
Attorney General's Office
Austin, Texas

The Hon. Robert Lowry
Juvenile Court No. 1
Houston, Texas

Mr. Jim Hutcheson
Chief Counsel
Texas Civil Judicial Council
Victoria, Texas

The Hon. Bill Logue
District Court
Waco, Texas

The Hon. Lewis F. Russell
Juvenile Court No. 1
Dallas, Texas

The Hon. M. C. Ledbetter
District Court
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Mr. George Looney, Director
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Mr. Ray Grill
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Panelists (Continued)

Mr. Richard Hatch
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Mr. Maurice Westerfeld
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Houston, Texas

Ms. Dee Miller
Assistant District Attorney
Dallas, Texas

Ms. Rae Ann Fitchner
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Mr. Dale Clingan
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Mr. Hugh Harkrider, Director
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Mr. Dan Schoenbacher, Director
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The Hon. James M. Farris
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Mr. Jim Hutcheson
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Mr. George Looney
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Mr. Dan Schoenbacher
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Texas Probation Advisory Committee (Continued)

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The Juvenile Court Judges Continuing Legal Education Committee

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The Hon. Robert Lowry
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The Hon. Woody Pond
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Canyon, Texas

The Hon. Billy D. Hullum
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Project Manager
Department of the Youth Authority
Sacramento, California

<u>Video Technician</u>

Mr. Bob Miller
Delinquency Prevention
Austin, Texas

A G E N D A

TEXAS JUVENILE JUSTICE CONFERENCE
Thursday, January 31, 1974

11:00 Mr. Ned Miller: Introductory Remarks
Program Coordinator Corrections Section
Criminal Justice Division of Austin

11:20 Mr. Bob Dawson: Overview of Title III
University of Texas School of Law
Professor of Law

12:45 Lunch

1:30 Mr. Bob Dawson: Overview of Title III Continued

2:15 Task Groups: (Judges and Probation Directors)

Section A (Dept. size - 1 man)
Section B (Dept. size - 2-4 men)
Section C (Dept. size - 5-10 men)
Section D (Dept. size - 11 and over men)

3:15 Panel: Responds to questions from groups

Panel A	Panel B	Panel C
Mr. Dale Clingan	The Hon. Robert Lowry	The Hon. Lewis Russell
The Hon. Bill Logue	Sgt. Glenn Walker	Mr. Maurice Westerfeld
Mr. John Cocoros	Mr. Richard Hatch	Ms. Rae Ann Fitchner
Mr. Dan Schoenbacher	Mr. Ray Grill	Mr. George Looney
The Hon. M. Ledbetter	Mr. Max Flusche	Ms. Dee Miller
Mr. Jim Hutcheson	Mr. Charlie Hawkes	The Hon. Scott Moore
		The Hon. Joe Dibrell

4:15 Break

EVENING SESSION

Purpose: To develop probation procedures for some of the problem areas of the code.

4:30-6:00 Task groups divided into: A, B Small dept. (2 Groups)
C, Middle depts., D, Large depts.

6:00 Dinner

EVENING SESSION (cont.)

	Section A	Section B	Section C	Section D	Judges
7:00-7:45	In-Basket	Detention Hearing	In-Basket	Writing Guidelines	Discussion with Bob Dawson
7:45-8:30	Detention Hearing	In-Basket	In-Basket	Same	Same
8:30-9:15	In-Basket	In-Basket	Detention Hearing	Same	Same

Panels:

Panel A	Panel B	Panel C	Panel D
Rae Ann Fitchner	Dale Clingan	Glenn Walker	Dee Miller
Richard Hatch	Max Flusche	Ray Grill	The Hon. Scott Moore
Judge Dibrell	Hugh Harkrider	Jim Hutcheson	Howard Large
Bob Barron		Maurice Westerfeld	

9:15 Evaluation

Friday, February 1, 1974

8:30 a.m. Mr. Max Flusche: CHINS, Mental Illness, Retardation
Attorney General's Office

9:30 The Hon. Joe Dibrell: Morales versus Turman and Recent Decisions
Attorney General's Office

10:30 Break

10:45 Mr. Ron Jackson: Texas Youth Council
Executive Director Texas Youth Council

11:30 General Discussion: Questions to the panel: Flusche, Dibrell, Jackson, Dawson

12:15 p.m. Lunch

2:00-3:00 Discussion; Evaluation

"AN OVERVIEW TO TITLE III OF THE NEW FAMILY CODE"

Robert O. Dawson
Professor of Law
University of Texas School of Law
Austin, Texas

"AN OVERVIEW TO TITLE III OF THE NEW FAMILY CODE"

by

Robert O. Dawson
Professor of Law
University of Texas School of Law
Austin, Texas

I assume that virtually all of you have worked with Title III either as judges or probation officers. You, therefore, have had some thoughts about it, some experience with it and perhaps some problems dealing with it. I would like for you to present to the group the problems, the difficulties, the benefits of the new law. Perhaps I can make some suggestions on solving some problems or perhaps we can get together on information that might indicate a need for change in Title III. The law is written, but it still can be changed.

The first thing I would like to talk about is section 51.03, which defines prohibited conduct for children. Section 51.03 deals with two kinds of conduct; delinquent conduct and what we call conduct indicating a need for supervision, which can be abbreviated either as CHINS or CINS depending on your preference. Delinquent conduct as under the old statute is a felony violation or violation of a jailable misdemeanor statute. That is very simple and straightforward and should present no problems.

Conduct indicating a need for supervision is a little bit more complicated. There are three types of conduct indicating a need for supervision. The first, in subsection (b)(1), deals with three or more violations of finable statutes or penal ordinances. It was the intent of the committee that drafted this not to require three or more violations of the same statute or the same ordinance. In other words, it does not have to be three simple assaults or whatever. It could be any conglomerate that fits within this general category. It may be any three ordinance violations so long as they occurred on three separate occasions or any three finable misdemeanor violations, or two ordinance and one misdemeanor. However you want to count them up.

Why did we do this? The old statute made it a ground for juvenile court intervention if the child habitually violated a finable misdemeanor provision or penal ordinance. We felt that the word "habitual" was unfortunately vague; there were no clear appellate judicial determinations of what "habitual" means. It also implied to some judges that it had to be of the same statute and that presented problems.

We tried the concept of multiple violations for these minor forms of misconduct while making the government's burden of proof easier. We made three or more instead of "habitual," and we tried to make it clear that it doesn't have to be the same statute.

Truancy, violations of the compulsory school attendance laws, is another kind of conduct indicating a need for supervision. This, again, is based on the old law. The old law said a person is a delinquent child who habitually violates the compulsory school attendance laws. The education code required that you attend a certain number of days at school a year. Before you could petition a child for truancy under the old code, he had to accumulate a sufficient number of unexcused absenses so that even if he attended every day during the remainder of the school term he could not attend the required number of classes.

In that context, what does the word "habitual" mean? Does it mean he has to do this regularly on a year-in-year-out basis, or do you just read the word out of the statute and say he violated the education code because he was absent more than the number of unexcused absences he could have? We took out the word "habitual" for that reason. It was unclear and created difficulty. We thought it was unnecessary, so under the new provision, if the child accumulates a sufficient number of unexcused absences, that's it. He is in violation of paragraph two.

The third type of conduct indicating a need for supervision is the child who is a runaway. The prior Texas law did not deal specifically with runaways. For a juvenile court to assume jurisdiction of a child because the child is a runaway, he had to have committed some other violation of law, or violated one of the vague standards of associating with vicious and immoral persons, or habitually deporting himself that he endangers the health or morals of himself or of others.

We felt that runaways were a specific problem and could be dealt with specifically. For the first time in Texas law, there is specific authority for dealing with runaways (defined in 51.03(b)(3)). The only difficulty I see with this definition is what constitutes "a substantial length of time." We debated this at great length but could not decide on anything more specific. It may be two days, three days, overnight, or whatever.

The fourth type of conduct indicating a need for supervision was added by the legislature. I will comment on that in just a minute. It is quite clear from the code that if a child is declared delinquent or to have engaged in delinquent conduct, the judge has two choices in disposition: 1) he can place the child on probation, or 2) he can commit the child to the custody of the Texas Youth Council. It is also clear that if the only thing the child is adjudged to have done is to engage in conduct indicating a need for supervision, the judge initially has only one choice - he must put the child on probation.

Contrary to popular belief, it is not true that you can never commit a CHINS to the Youth Council. It becomes a little complicated, so bear with me; I'll show you how it works. If the child is placed on probation because he violated the first type of the CHINS definition, that is three or more violations of finable misdemeanor statutes or ordinances or any combination, the judge must put the child on probation.

If the child violates a reasonable and lawful probation condition, then a new petition may be filed alleging that the child is a delinquent child under section 51.03(a)(2).

Notice that the provision added by the legislature to 51.03(a)(2) beginning with "except" does not deal with this kind of conduct indicating a need for supervision. It specifies that one definition of delinquency is a violation of a reasonable and lawful order of the juvenile court, except an order entered pursuant to a determination that the child is a CHINS, (under (b)(2)) which is truancy, or (b)(3) which is running away, is not grounds for a determination of delinquency.

If the child is on probation for three or more finable misdemeanors or ordinance violations and he violates probation, a new petition alleging he is delinquent under this section can be filed. If proved, the judge can again put the child on probation or commit him to the Youth Council as in any other case of an adjudged delinquent child.

How about truants and runaways? It becomes a little more complex because of the changes made in the statute by the legislature. As the Family Law Council submitted the statute to the legislature, you have to put the runaway and the truant on probation. If the child violated probation, then you could file a new petition and commit him to the Youth Council. The legislature thought that did not provide adequate protection for the child that has not violated the law except for being a truant or a runaway.

How does it work? The child who has been adjudged a truant or a runaway has to be put on probation. If he violates a condition of probation, a new petition can be filed alleging that the child violated a reasonable and lawful order of the juvenile court. This is perfectly consistent with all the other provisions of the statute.

Section (b)(4) doesn't prohibit this; however, the key is to look at (a)(2). (a)(2) prohibits it. If the child is on probation for violation pursuant to a determination of violating (b)(2) or (b)(3), the child started out that way but then he was adjudicated under (b)(4). There is nothing in that section to prohibit adjudicating a child a delinquent because he violated probation following being put on probation under (b)(4), like (b)(1) in that respect.

You have two kinds of CHINS. Under the first kind is the child who engaged in finable criminal conduct. The court may send him to the Youth Council following a new petition if he violates probation. If the only thing the child has done though is engaged in truancy or running away, it is then a two-step process instead of a one-step process: you would have to give the child two opportunities to succeed in the community before you can commit him to the Youth Council. I suppose this comes a surprise in that I believe that the common belief accompanying the statute indicated that under any circumstances you could never commit a truant or runaway to the Youth Council. I originally believed that as a result of what the legislature did, but it just isn't so. I studied it carefully and it can be done I am persuaded in the manner I suggested.

There are some differences in revocation hearings. The child would have no right to a jury trial. In a new adjudication hearing, he would have the right to a jury trial. That is one major and in some cases perhaps important procedural protection. There probably aren't many differences other than that. You have to remember that these new adjudication hearings are substitutes for revocation hearings. The issue is only was the child on probation and what were the conditions of probation. Did he violate them? That is a much more narrowly circumscribed issue than did he commit burglary or auto theft or whatever else it may be. Although it does require a new adjudication hearing, the issues are very limited in that hearing.

QUESTION: In the subsequent adjudication petitions, do we use the same cause number or not?

DAWSON: I think you should work it out with the clerk of your courts. I do not think it makes any difference whether you conceive of it as a substitute petition or if you conceive it as a new proceeding.

QUESTION: With respect to truants and runaways, why can you commit them after the third hearing but not after the second?

DAWSON: I am tempted to say that I did not draft this section of the statute; the legislature did it, not as we proposed it. I think you can rationalize it on the grounds that the child who is truant or a runaway has not violated the criminal law. We are not so much concerned with the protection of the public as we are concerned with preventing the child from becoming a threat to the public. Therefore you should give the child the opportunity to correct his problems in the community and give him two opportunities. That is what this section is saying as opposed to the child who has engaged in criminal misconduct all be it of a very petty nature under (b)(1), in which he has only one opportunity to adjust in the community.

QUESTION: The child is put on probation for truancy. If he violates probation, he has violated a lawful order to the court. Why can't you commit him?

DAWSON: In simple language, the statute prohibits it. Subsection (b)(2) beginning with "except" was added by the legislature simply because the legislature concluded or at least the house judiciary committee that drafted this language concluded that if the child was merely truant or a runaway that does not justify the infringment on his liberty or his parents' custody that occurs upon committment of the child to the Youth Council. Assuming the child is proven guilty, you still cannot commit him to the Youth Council the first time.

QUESTION: Could a child be placed in a Texas Youth Council home as a condition of probation for being truant or runaway?

DAWSON: I think the answer is clearly no. In section 54.04 subsection (d), you will find that the court may place the child on probation etc., in his own home or in the custody of a relative or other fit person or a suitable foster home or in a suitable public or private institution or agency, except the Texas Youth Council. I don't see how you can read it to say anything but what it says. Although you might be contemplating placement of a child in a delinquent and neglect home rather than a delinquency agency, you still cannot do it as a condition of probation.

As a condition of probation you can use all other institutional facilities that might be available - boys' ranches, girls' ranches, things of that sort. Probation does not mean that the child has to stay in his parents' home.

QUESTION: What happens under Title III when the child has runaway from home?

DAWSON: It seems clear that the reason for it is inadequate parental supervision or care or guidance or whatever. We originally had in the definition of runaway the following language: the runaway is a voluntary absence of a child from his home without justification and without consent of his parents. It would be hard to adjudicate a child of CHINS when he has been pushed out of the nest by his parents. The committee discussed it but decided that it opens up so many areas that we decided to eliminate the language. The competing interests were obviously an attempt to try to take care of the situation where the child is literally kicked out of the home or driven out of the home, but you can still characterize his leaving as voluntary.

Do you give up a defense in that situation and are you willing to pay the price? The price is an extraordinary vague element of proof for the state - that the leaving is without justification. This is due to the fact that Mommy or Daddy wouldn't let the child say go to the party on Saturday night. Would this be justification for the child leaving? We would be litigating these kinds of questions. I think the way to handle this problem if the case is really evaluated along the lines that Howard Large suggests is that you file a petition on dependency and neglect. That seems to fit the facts of the situation better than filing a CHINS petition. As a defense attorney, you probably litigate it saying the absence was not really voluntary. I think there would be all sorts of situations we would all conclude that the absence was voluntary.

Title II of the Family Code authorizes termination if a parent is a major cause of the child running away. I can see some real problems in a combined petition; I think you are really alleging fundamentally inconsistent things. I think you are alleging in a termination that parents are a major cause of the child leaving. You are alleging in the CHINS petition that the child voluntarily left. These may not be in all situations inconsistent, but I think there is a difficulty there that would permit the court to find one petition supported and not the other, but not necessarily both. The state could go into the hearing with two theories on how to deal with the case and let the judge decide.

QUESTION: Aren't runaways and especially truancy cases, really, at least compared with the other things the juvenile court has to deal with, trivial matters?

DAWSON: There are substantial sentiments from judges and probation officers I talked with that the juvenile court ought not to have jurisdiction over truants and runaways. We have enough problems trying to deal with our burglars and our auto theft and drug cases without messing around with these family problems. There is also a good deal of sentiment from another body of judges and probation officers that very often the juvenile court can do some very rewarding, useful, worthwhile, socially beneficial work with truants and with runaways. This group of people did not want to give up the prospects of preventing a child from slipping into habits of delinquency and crime violations when they could intervene at an early stage in this process at the first symptoms - frequently truants, sometimes runaways.

In the grand tradition of statutory draftsmanship, we compromised. We gave jurisdiction to the court but limited the dispositional powers. I think if the judge feels that he does not want to take his time and the court's time with truancy and runaway cases that he can use the power that his staff has under section 53.01. In 53.01, before the prosecutor can file a petition there has to be a determination that there is

probable cause to believe the child has engaged in delinquent conduct or indicating a need for supervision and that further proceedings in the case are in the interests of the child or the public. I think that a juvenile court judge could tell his intake staff he doesn't want any of these truants or runaway cases and that you don't certify them under 53.01. That would effectively end the legal proceedings. Another judge who thinks that he and his staff can work effectively and beneficially with truants or runaways doesn't do that. So it seems to me there is flexibility in the statute as it is drafted. It puts the heat on the judge. The judge has to tell Mommy and Daddy we could do something, but we have more important cases. However, if the judge is willing to do it, he can certainly do it under 53.01.

QUESTION: Does the fact that the parents want to commit their children to the Youth Council make any difference?

DAWSON: If you recall some of the problems that arose in El Paso arose for this very reason. The children were committed without appropriate procedural protections. It seems to me that it would be inviting disaster to attempt to resurrect what really became a tramatic episode in the history of juvenile justice in this state. I feel there is no legal justification for it. How a child responds or does not respond to the supervision would be determinative of the disposition. You still have to file for a delinquency petition and prove it if the defense insisted on it.

In explaining the third adjudication hearing in the truancy and runaway case, the petition alleges the child has engaged in delinquent conduct because he has violated Family Code 51.03 in that he violated a reasonable and lawful order of probation imposed upon him pursuant to a finding under Texas Family Code 51.03(b)(4). It was based upon violation of a probation order. All you have to do is allege that he was on probation under (b)(4) and he violated probation.

Under penal statute provisions dealing with criminal proceedings against traffic violators for males between the ages 14 and 17 and 14 and 18 for females, it is excepted from the jurisdiction of the juvenile court; it's just a matter for the municipal or county court proceedings.

The statute does prohibit jailing a child for non-payment of a fine. Again the judgment that was made is of some controversy. If you look at the total range of problems presented to the juvenile court, traffic matters even as serious as driving while intoxicated probally do not warrant juvenile court intervention in most places.

What is most relevant in Title III to the rehabilitation process is the provision for voluntary probation or what we call intake conference and adjustment. This appears in section 53.03 of Title III. This permits a period of voluntary probation for a length of time not to exceed six months prior to and without any court hearing of a child who would otherwise probably be within the jurisdiction of the court. It has been shown in many courts to be a very useful rehabilitative device.

The other thing that would be a positive contribution of the code would be the rehabilitation of children in the community (see the provisions on expungement in section 51.16). What a probation officer can say to a child that he could not say under the prior law is if you cooperate on probation, really do a good job, really work with me then after your discharge from probation, all of this will be wiped clean. It will not follow you around to embarass or harass you the rest of your life. A professional probation officer should make good use of this provision as a concrete goal. Section 51.16 provides for sealing the records.

I want to deal with the question of pre-trial detention. I suspect some of you have had some experience with that. One of the major changes in Title III in Texas juvenile law was to require a prompt detention hearing - a hearing within the next working day after the child is taken into custody. The Family Law Council was very sensitive to two different competing interests in the area of juvenile detention. First in my mind and foremost, was to require a prompt carefully structured judicial determination of whether the child has to be detained or not pending trial. This was not required by the prior law. We therefore said in section 54.01 of Title III that the child must have his hearing before the close of the next working day and he must be released unless one of the justifications for detaining him can be found. However, the committee was not insensitive to the other competing consideration. The district court judge may be the juvenile court judge and may have to travel 100 miles to where the detention hearing is being held. This is an administrative difficulty in having a juvenile detention hearing program in a state such as Texas in which conditions range from Harris to Loving counties. We were sensitized to the problems of the urban areas of the state where to require a judge personally to conduct a detention hearing today would mean he would be only conducting detention hearings and would not be available for other important judicial work.

How do we try to accommodate these competing interests? We required a detention hearing but we tried to put flexibility into administering and implementing the system so as to enable people to adapt it to local conditions. No one is trying to put a single staight jacket on all the juvenile courts in Texas; it would not be possible even if it would be desirable, but it is clearly not.

I am going to show you a series of things under section 51.04 that will show you how you can adapt the detention hearing requirements to local conditions. A major change in the law was to require that the judge of a juvenile court be an attorney licenced to practice law. The committee was in agreement that in order to properly implement the statute and in order to protect the rights of juveniles and the right of the public to a fair hearing, we had to recognize the problems caused in the rural areas of the state where the only lawyer or judge available was the district judge.

The first point is that more than one juvenile court judge can be named under section 51.04. In moderately-sized areas of the state where a county is served by two district judges, both can be named. One can be named primary juvenile court judge and the other a backup or an alternate juvenile court judge. This increases the likelihood that detention hearings would be available. We went beyond that (subsection (f)). We provided if the juvenile court judge or alternate judge is outside the county or otherwise unavailable, then the detention hearing can be conducted before any magistrate. That includes a county judge, justices of the peace, municiple court judges, and also includes the mayor. This is a very conscious relaxation of our requirement of a detention hearing in order to recognize the very real problems in rural areas of the state where you will not have a judge who is a lawyer available to conduct the detention hearings after a child is taken into custody. Therefore, any magistrate can conduct the detention hearing; he doesn't have to be a lawyer.

In urban areas of the state we had a different problem. We tried to recognize that problem in section 54.01 in which we provided for the appointment of a full-time or part-time detention referee so it would not be necessary to use the over-worked juvenile court judge to personally conduct all detention hearings. He could persuade proper authorities, that is the commissioners court, to give him enough money to get a full or part-time referee. Now there are a fair number of detention referees operating in Texas. How the referee system is to work to provide for the protection of people's legal rights is spelled out in section 54.01.

There are three more things that we did applicable to both rural and urban areas of the state. We tried to make the detention problems a little easier for the system to live with while at the same time not back down from our original commitment that every person is entitled quickly to a careful determination of detention.

First, we authorized the police to issue warning notices or citations instead of taking the child into custody. If the juvenile court judge and the police department approves, the police department can issue guidelines permitting the officers to deal with minor or petty instances of adolescent misconduct by issuing sort of a traffic citation (authorized in section 52.01). This has been implemented in various areas of the state instead of taking the child into custody.

From a law enforcements viewpoint, the benefits are obvious. Anytime you make an arrest, whether its for murder or spitting on the sidewalk, a radio unit is out of service for the average length of time of about one hour. Why do that if the matter can be handled in a different way? Why should the officer on the beat take a child down to the station or detention facility if what is going to happen is the child will just be released or forgotten about. If the juvenile court judge approves these guidelines, warning notices can be issued. The officer on the beat can simply give the notice to the child or his parent and can send a copy to the juvenile court. If the juvenile court wants it may then require the child and his family to come down to the court to see if there is a real problem. I think the best way this system can be implemented is if some probation officer in the court was designated as reviewing officer for the citations. It might not be a particularly significant matter if the child is out until 3:00 in the morning one night. However, if a pattern begins to develop and implies that this particular child is being unsupervised - he is out until 3:00 a.m. numerous nights - then this may be an occasion for the juvenile court. The juvenile court may not take formal jurisdiction but at least give a little bit of counseling. The juvenile court would be in a position to make this judgment. The police department might not be because it may have been five different nights and five different officers who found the child out at three in the morning. Obviously if the child is not taken into custody, there is no need for a detention hearing.

The second thing we did appears in section 52.02 making clear in paragraph (a)(1) that the police had the authority to refer a case to juvenile court without also referring the child to the juvenile court. The history of law enforcement in this country has indicated that it is very difficult to break up this combination of the papers going over and the person going over. We have authorized the police as the prior law did to release the child taken into custody to his parents or custodian or guardian while referring the case to the juvenile court.

The third thing we did in order to try to deal with this problem of pre-trial detention is to authorize administrative determinations of detention. Section 53.02 gives authority for an intake or other authorized officer of the court to administratively release the child pending the court hearing. This is the way the process operated most frequently prior to the new law. In most cases the child was released by the probation officer rather than by the judge - that is retained and specifically authorized in section 53.02. It should only be the child who is taken into custody - instead of being given a citation - who is referred to the court, instead of being released under the ~~an~~ earlier authority and who is not released by the intake staff who should be there present and in need of a detention hearing. I should think that it would still be true that the majority of people referred to the court would be released under 53.02 rather than have detention hearings. It seems to be a much easier way of doing it for only those children not released under 53.02 would there be a detention hearing.

At the detention hearing we would get judges or referees to review the work product of the intake department.

The detention hearing itself excludes Saturdays, Sundays and legal holidays (section 54.01) for the convenience of the people in the system who have a child in detention who is arrested on Friday to keep him in until Monday or even Tuesday if it is a legal holiday. I think we have to be realistic when you are going to have a detention hearing. If the judge wants to hold the hearing or the referee wants to do it or have the intake staff available, fine. But most of us are very leary of imposing a rigid 24-hour requirement on all the personnel on the juvenile system in the state. I don't think it can possibly be followed in many cases and would be pointless. In any event, a leeway is given for weekends and holidays.

Some of my students would be amazed that I was much too conservative on these issues compared to the reformed-minded legislature. As we originally submitted the bill to the legislature, a child had the right to an attorney at a detention hearing, but that right could be waived by the child and the child's parent, guardian, guardian ad litem, or custodian. That is not how it came out of the legislature. It came out of the legislature that a child has a right to an attorney at a detention hearing unless the right was waived by the child and his attorney. I want to disclaim any authorship.

There is some support for looking at it in a different way. If the child is not represented by an attorney at a detention hearing and a determination is made to detain the child, the child shall immediately be entitled to representation by an attorney. I don't know what that means because we said earlier in section 51.10 the child may be represented by an attorney at every stage of proceedings so he is already entitled to representation by an attorney whether he is at a detention hearing, released or not. I don't know what that language means. The legislature must have put it in there for some purpose. They must have contemplated that some children would have detention hearings without lawyers. Doesn't that mean they can waive them? Perhaps, yes, perhaps, no. It is still theoretically consistent for a child to confer with a lawyer and the lawyer says the child doesn't need a lawyer. He is willing to waive an attorney at a detention hearing. I think this is unlikely but it is possible. I would be happy for any suggestions for interpretation that you may have. The section seems to contemplate there might be situations that the child doesn't have a lawyer at a detention hearing. As I indicated, the language in section 51.09 and 51.10 seem clear if you read them together. Sure you can waive a lawyer for a detention hearing but the child has to waive and the lawyer has to waive. Again, that is not my language.

My view of a different subject is the child has a constitutional right to an administrative hearing before his after-care can be revoked by the Youth Council. He has a constitutional right to an impartial administrative decision maker. The United States' Supreme Court has held in adult parole revocation that the adult person also has a right to an attorney if he is indigent and if there is some dispute of fact concerning the parole revocation. If he denies that he violated parole, I should think that exactly the same rules would apply with respect to revocation of the Texas Youth Council after-care status.

QUESTION: Assuming they do, under what circumstances can the Texas Youth Council get a waiver of attorney?

DAWSON: They may be able to do so without the concurrence of some adult or other person because section 51.09 applies only to Title III proceedings; that is not under Title III proceedings. It is under the Youth Council statute. In order to give up the right to a lawyer, you have to know what it is and you have to know what it means to give it up. You have to be free from any intimidation or coercion or influence in giving up the right to a lawyer.

Section 51.09 requires those things before any right can be waived. In addition, we require concurrence by an attorney. I would suppose in juvenile after-care, although it is a little off of our subject, they could get waiver of an attorney as long as it were clearly understood that the child had a right to a lawyer, understood the consequences of waiving that right and waived the right voluntarily.

In a comparable kind of situation, the courts have held that confessions given by children held in police custody are admissable dispite the tender age of a child - 14 is the youngest I have seen. Of course, he has been given his Miranda warnings and there was nothing to indicate he could not understand the warnings and the full import of them. There was no evidence he was coerced into giving up the right to a lawyer and the right to remaining silent. Therefore, the confessions are admissable. He has the right to give up a lawyer in after-care proceedings. Section 51.09 means in order to obtain a waiver of statutory and constitutional right, the child has to have an attorney. That is the way I read it.

QUESTION: According to 52.01, can the police when they take a child into custody, take him to the police station for interrogation?

DAWSON: The answer seems to me to be no, unless the juvenile court judge has issued an order permitting that to occur. Under the authority of section 52.02(a)(2), one of the police alternative dispositions is to bring the child before the officer or official

designated by the juvenile court. The juvenile court could then say if you arrest a child for auto theft you may take him to be processed by the auto theft squad but the court could put conditions on that. You cannot keep him for more than an hour or you have to notify us in an hour or whatever he perceives to the dangers, the risks, the problems involved in that. What that language does is to give the juvenile court the power to say no, you have to bring him straight out to detention.

In section 51.02 paragraph 2 is the definition of parent which excludes a father of an illegitimate child. This was drafted prior to the Supreme Court's decision in Stanley v. Illinois. In Stanley, the Supreme Court held that it was unconstitutional to differentiate between a father of a legitimate child and the father of an illegitimate child who has lived with the child off and on for a long period of time and who has contributed to his support. My guess is that the case doesn't present too many problems under Title III because of the minimum juvenile court age at age 10. However, I would urge the judges, prosecutors and probation officers to try to determine whether there is a father or whether the child is illegitimate. If the child is illegitimate, try to determine the father's location if known, and if so, simply include that person among the persons given the petition and summons, given notice of the hearing as required in section 53.05 and 53.06. I don't think if you fail to do that the adjudication would be invalid, but the cautious judge would want to include that notice. I think that would cure the problem that Stanley v. Illinois may create. I don't know and I don't know whether anyone else would know either whether Stanley would reach the situation of the father of the illegitimate child who has never lived with the child and never acknowledged the child or contributed to his support. I doubt that it would, but that is just a guess. At least there is a known father of the child and you know where he is. I think it does very little harm to send out a notice to him as well as to the mother and the child himself; it is possible you may save yourself some difficulty later on.

One section I should like to discuss with you is the section on transfer to criminal court in section 54.02. One of the things that the people who worked on Title III wanted to accomplish was to end the practice in Texas of avoiding a waiver of jurisdiction hearing merely by waiting until the child became 17 years of age. The prosecutor then presents the case to the grand jury for indictments. That may or may not be unconstitutional under Kent v. United States. Those of us on the committee felt that even if it was constitutional, it was undesirable. We sought to change the upper juvenile court age to 17 for both males and females but to change it from age at the time of proceedings to age at the time of offense. What we hope to accomplish by that was to acquire a waiver of jurisdiction hearing everytime it is alleged that a person committed a felony prior to the time he became 17.

In section 51.02 paragraph 1, a child is defined to mean a person 10 years of age and under 17, or a person who is 17 and under 18 but who is charged with having committed an offense before becoming 17.

We sought to make this change by amending article 30 of the Texas Penal Code of 1925. Subsection (b) of article 30 says that unless the juvenile court waives jurisdiction and certifies the individual for criminal prosecution, a person may not be prosecuted for or convicted of any offense committed before reaching 17 years of age. That very clearly means if the child is alleged to have committed a felony before becoming 17 and you want to transfer him you will have to go through a waiver of jurisdiction hearing in juvenile court before he can be indicted in criminal court. You have until age 18 to do it. So far it is very simple, but it becomes more complex. At the same session of the legislature that enacted Title III of the Family Code and this amendment to article 30 of the old Penal Code, the legislature also enacted a new Penal Code. The new Penal Code contains section 8.07 that carries into effect the provisions of the old Penal Code making age of the time of the proceedings the determining criterion rather than age at the time of offense.

What is the law? The Juvenile Code went into effect on September 1, 1973. The Penal Code did not go into effect until January 1st of this year. The law was vitally changed by virtue of this amendment of article 30. On September 1st, article 30 was repealed and replaced by section 8.07 on January 1st. It could therefore be argued that for the four months from September 1 to January 1, Texas law was changed from making the age at the time of proceedings critical to making age of the time of the offense critical and then was changed back to making the time of proceedings critical.

There are at least three reasons why that is incorrect. In my view, section 8.07 of the Penal Code has already been repealed and never went into effect. First, the law is that the legislature is supposed to be proceeding from the same point of view during a single legislative session. It would be very difficult to explain what public policy motivated that legislature to make a significant change in Texas law but have it be in effect for only four months and than change back to the way the law was. Secondly and perhaps more importantly, the Juvenile Code passed the legislature after the Penal Code; the Juvenile Code passed both houses of the legislature and was signed by the governor after the Penal Code. The Texas courts have taken the position that when the legislature enacts inconsistent statutes during the same session of the legislature then that which is enacted later in time is regarded as being the definitive expression of legislative will and controls.

If that rule is followed then that would mean that amended article 30 of the old Penal Code is now the law rather than section 8.07 of the new Penal Code. Thirdly, the Texas Code Act applies this rule about later in time controls. It also speaks directly to this issue. It says if the legislature enacts a code and in the same session of the legislature amends a statute, then no matter what came last in time, the amendment to the statute is regarded as being controlling because it is more specific. We assume that the legislature just overlooked the provision that is contained in the larger code. The only safe course of action for juvenial officials to take until this matter is clarified by the appellate courts - which might take a little time - is to provide a waiver of jurisdiction hearing under 54.02 anytime a child is alleged to have committed a felony before he became 17. You are seeking to waive jurisdiction and have him prosecuted in criminal court.

There is one other related matter that I would like to bring to your attention. Subsection (c) of amended article 30 says that a person who has been alleged in a petition for an adjudication hearing to have engaged in delinquent conduct or conduct indicating a need for supervision, may not be prosecuted for or convicted of any offense within the knowledge of the juvenile court judge as evidenced by anything in the record of the juvenile court proceedings. If article 30 is valid, and that depends upon the arguments I gave you earlier, then what this section means is that once a petition for an adjudication hearing has been filed, then the prosecutor may not thereafter petition for a transfer of jurisdiction hearing. The prosecutor can file a petition for a transfer of jurisdiction hearing and if the juvenile court judge refuses to transfer, may then file a petition for an adjudication hearing. It is not, in my view, unconscionable to require the state's attorney to make this election since there is no time requirement for filing any kind of petition in the Juvenile Code. The juvenile statute section 53.04(a) simply says that a petition for an adjudication or a transfer hearing may be made as promptly as practicable by the prosecuting attorney. Once the petition is filed, the initial setting of the case has to be within ten days if the child is in custody. This has nothing to do with filing the petition. The problem is that we did not want to do anything that would require the premature drafting and filing of petitions.

I think it is in the interests of everyone that the prosecutor when he files his petition be able to say I think I can prove this case or would not have filed this petition. There will be situations in drug cases for example in which drugs are sent off to Austin or a regional Department of Public Safety Laboratory in which you may not get the results back for quite awhile. You may not know whether it is LSD or marijuana or something else. There are other situations in which the prosecutor may not really be able to say, "all right I am sure I have the evidence, and I am willing to file a petition," so we didn't require a petition within any particular time.

Detention hearings can be held even though no petition has been filed. The child could even be put on informal probation without a petition ever being filed in the case. What we had in mind is that there are two kinds of petitions: a petition for an adjudication hearing and a petition for a transfer hearing. We wanted to make sure that the prosecutor could really feel confident before he filed that petition because we didn't think it was in anyone's interest for the prosecutor to be filing shaky petitions. Once a prosecutor files his adjudication petition he is saying to the world this case is going to stay in the juvenile process even though the child is over 15 years of age and he is alleged to have committed a felony. That way the child and his attorney can concentrate on defending his case in juvenile court and need not be concerned about the possibility of transfer to criminal court. In my judgment, unless you require that at certain points, you can really get into serious double jeopardy problems.

We specifically do not have any time limits for the filing of a petition. Obviously if the case drags on and no petition is filed, at some point the child will have a claim that his constitutional right to have a speedy trial is denied. There is nothing in this code that prevents that claim from being litigated. We are willing to rely on the right to a speedy trial in order to guard against horrendous burdens of not petitioning soon enough. We did not want to force premature filing of petitions.

The paper you would be holding the child on would be a written referral from the police department. I think that should be sufficient. Using an analogy in felony cases, people are held in detention for a long period of time before an indictment is returned and they were held simply on the basis of the complaint and possibly on the basis if one is demanded of an examining trial. We have exactly the same situation in juvenile practice. We didn't intend to require the filing of the petition before the detention hearing. I think that creates some real problems. If you want to make sure you are going to make some good petitions, I think it is very difficult to complete the investigation and to get lab results back and other things you should have before you take the step of petitioning a child. Rather than requiring a petition and being concerned about dismissing petitions that were improvidently filed, we decided not to have any time requirements for filing a petition.

I think the child is taken into custody by the law enforcement officer. Under the authority of the statute, he is referred to the court. Under the authority of the statute, it seems to me that the court has all the authority it needs to conduct a detention hearing and to issue a detention order under the statute without the filing of a petition. The child can be held for ten days under that order.

If there is a desire to hold him further, then you have to have either a further detention hearing or you have to have the child or lawyer waive the detention hearings. I don't see any civil liability problems with that. Just like felony cases, you can't try a person on a felony complaint - you have to have an indictment.

There is under the statute as it now exists the possibility that if the person is not apprehended by age 18, that he may not be subject to either criminal or juvenile proceedings. That was done by the legislature in amending the draft as we gave it to them. As we gave the draft to them, the juvenile court would have had until age 21 to take action or not. The legislature decided that for some reason age 18 had to be the same for everything. After they passed the 18 year-old majority bill, they also ammended the juvenile statute to change the age of 21 to 18 at all points. We thought we had it dealt with because you would have had five full years to conceive of cases that would go on unsolved or people who would have gone unapprehended for five years. We were willing to take that risk in order to get the benefits of acquiring a waiver of jurisdiction hearing. I would not have been, if I would have been asked, in favor of changing 21 to 18 for these purposes. I think it is a problem. I doubt that it occurs often, but I think it occurs enough to be of concern. I think it should be changed in the statute.

Sections 51.14-16 were to put some real teeth in the concept of confidentiality of juvenile files and records. We would require juvenile records to be kept separate from adult police records. They are not to be sent to Austin or to Washington and they are not subject to indiscriminate public disclosure. I think all of these provisions were implied under the previous law, but we spelled them out in order to make sure what some people called the promise of confidentiality in the juvenile system is a promise that is really carried out. The really new provision, I think, is in section 51.16 which deals with sealing of files and records. 51.16 requires the court to seal files and records if two years have elapsed since the child was last in the juvenile process and there have been no further law violations or delinquency charges. The court may, in its discretion, seal files and records earlier than that in recognition of the fact that a number of juvenile cases are a result of adolescent experimentation which is not likely to occur again. There is real benefit to hide this mistake from the public in the future and that is the reason for the sealing provision.

If the juvenile is with the adult in some offense, then the police make a separate offense report not mentioning the juvenile's name on the adult offense record. The police should make reference to the juvenile court offense number which would be sufficient for internal police purposes but at the same time would not subject the juvenile to adult disclosure.

When the court seals the records of the juvenile, does it seal them from the court itself? The intent was that once records are sealed (all records of the prosecuting attorney, police, clerk of the courts, juvenile, social and legal and institutional records) when they are brought in they should all be put together and put in a locked file cabinet. Once the court determines that the records are sealed, then they are opened to the court only upon petition of the child. The juvenile court judge must be convinced that the child has been rehabilitated to require the court to seal. I suspect that with a careful juvenile court judge, if all those circumstances are met then you are not going to have many kids coming back once these records have been sealed. The standards are pretty rigid.

"CHINS, MENTAL ILLNESS, RETARDATION UNDER TITLE III"

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I would like to make a few comments about the need for this new code for the handling of juvenile delinquents and children in need of supervision.

I think one of the most amusing cases that you can read is In Re. Henry Santana. In Re. Henry Santana, a case tried in Lubbock, Judge Davidson ruled that the burden of proof in the trial of juvenile delinquency, under the Texas Rules of Civil Procedure, was proved by a preponderence of the evidence. The case was appealed up to the Amarillo Court of Civil Appeals. Judge Denton wrote the opinion. He read one Illinois case which interpreted In Re. Gault, and he concluded that from the criminal nature of the proceedings the proof should be beyond a reasonable doubt. He reversed Judge Davidson. Then the case came down to the Texas Supreme Court. The majority ruled no. They said under the rule of Texas Civil Procedure, the burden of proof is proof by a preponderence of the evidence. Then it went to the United States Supreme Court, and those nine gentlemen said nope; it is proof beyond a reasonable doubt. So you have four separate levels of courts ruling two different diametrically opposed directions. I think In Re. Henry Santana demonstrates the need we had for a more precise definition in the handling of juvenile delinquency.

I wasn't on the committee that redrafted this, but I did participate in the subcommittee of the legislature that was considering this bill. I insisted on the rule that would provide for proof beyond a reasonable doubt so there would be no misinterpretation of this. It demonstrated the necessity for a more precise definition of the terms in the Juvenile Code.

First of all, we were involved in Morales versus Turman. In connection with Morales versus Turman, we sent out a number of interrogatories to the various juvenile court judges about the manner in which twelve or fifteen hundred children had been committed. These questions dealt with whether these kids had counsel or whether they waived counsel. Finally, we sent out interrogatories to ask what burden of proof did the judge require of the prosecution. Was it proof beyond a reasonable doubt or proof by preponderence of the evidence?

As a result, we had massive writs of habeas corpus filed in the state court in Travis county. In three different proceedings, we ultimately released on writs of habeas corpus - about twelve hundred kids. The greatest number were released because of absence of counsel in the adjudication stage of the proceedings. There were one hundred some who were released because of an invalid waiver; the remainder released because the judges had used an erronous burden of proof - proof by a preponderence of the evidence in adjudicating the child to be a delinquent. There is one very troublesome aspect of these massive writs. First, they were filed in Travis county on the theory that Dr. James Turman had his residence here in Travis county and therefore he was the person having custody of these children. Therefore, venue lay in Travis county. That makes it very difficult to defend because you don't have the record of the trial here; you don't have the witnesses so you have to defend on a boot-strap operation. I tried to find some reason for making a change of venue or plea of privilege, but I was not able to conclude in my research that we could file such a motion validly. When the Austin Court of Civil Appeals decided one of these cases, Judge Shannon said I waived my right to file a motion for change of venue. I told him if I could find something to give me the right to make such a motion I would have done it. Nevertheless, that was an experience which showed the need for a more precise definition. I got a provision written in this bill to provide in future writs of habeas corpus which were contesting the validity of the commitment, that the venue would lie in the county in which the court committed the child. That provision was written into the code.

When I first read the code when it came out, it appeared to me that there was no way you could put a CHIN in the Texas Youth Council. After studying and discussing it with Bob Dawson, I am inclined to agree with his conclusion. The subcommittee that drafted this bill took an enlightened view of putting children who are in need of supervision in the Texas Youth Council. Read the first two or three sections of this bill, 51.01 and 51.02, to determine the purpose of this bill as well as the general policies to be carried out under this bill. You find there is a good deal of emphasis on community oriented programs. In Morales versus Turman we had numerous witnesses, experts, people who were admittedly well-qualified in their field to testify that the best interests of the child can be served by trying to treat him or rehabilitate him in a community oriented program to keep him as close to his parents, friends, school, and his environment.

The legislature enacted that into the first few sections of this bill as enunciating their policy in that regard. In conformity with this policy, they determined that persons who were guilty of minor offenses - finable offenses that are misdemeanors that persons who are truants and person who are runaways should not be sent away to the Texas Youth Council on their first appearance in court. In so far as the person who is guilty of three finable misdemeanor offenses is concerned, the only thing the judge can do if he finds that the child is in need of supervision is to put him on probation.

If he violates the terms of this probation under the provisions of 51.03(a)(2), he can file a new petition and adjudicate him to be a delinquent because of a refusal or failure to obey the order of the judge, in adjudicating him a child in need of supervision. I don't think there is much controversy about that. Then in the case of runaways or truants under 51.03(b)(2) and (b)(3) if he finds they are truants in accordance with the definition in the statute, the only thing he can do is put them on probation. Because of the strictures in 51.03(b)(4) if he finds they did violate the terms of their probation after they have been adjudicated a child in need of supervision because of truancy or having been a runaway, then the only thing you can do is put him on probation again. File a new petition and cite as the reason for adjudicating them to be a child in need of supervision the fact that he violated the order of the court in the first probation. Then if you put him on probation at that juncture and he again violates the term of his probation, then you can go back to 51.03(a)(2) and find that he violated the terms of 51.03(b)(4) and adjudicate him to be a juvenile delinquent.

There is one problem that is recognized in the disposition hearing. Section 54.04(g) says in no event shall a child who has been engaged in the conduct described in 51.03(b)(2), (b)(3), and (b)(4) be placed in the Texas Youth Council. That only applies to the first revocation of probation hearing when you file your second petition. Otherwise the language of 51.03(a)(2) would be meaningless. It would have no efficacy and, of course, a rule of statutory construction in interpreting legislation is to try to give effect to every bit of the legislation. To give 51.03(a)(2) no effect, of course, would violate this rule of construction. 51.03(a)(2) does not contain any prohibition against 51.03(b)(4). It only speaks to 51.03(b)(2) and 51.03(b)(3). Therefore, we have concluded that a violation on the second instance of probation can indeed form the basis for putting them in the Texas Youth Council. 51.03(b)(1) speaks of the commission of three fineable offenses.

Prior to the enactment of the new code, we could take a juvenile between the ages of 14 and 17 and, without referring him to the juvenile court, we could try him for minor in possession in violation of the Texas Alcoholic Beverage Laws, or we could fine him for a violation of the traffic laws. We could fine him in municipal court or fine him in justice of the peace court. In the jurisdiction section of this statute, it says the juvenile court should have exclusive jurisdiction of proceedings against the children who are described in this code. It excepts, of course, traffic offenses pursuant to article 8.02(e) of the Penal Code which is primarily concerned with driving while intoxicated. It mades no mention of offenses such as minor in possession. Minors in possession is still in article 667 of the Texas Alcoholic Beverage Commission Law.

I do not feel there is any way we could try in either juvenile or municipal court a violation of minor in possession. I don't think we can fine him. There are two reasons for this. First, the language of the jurisdiction section of the statute which refers to exclusive original jurisdiction and then the language of article 30 of the Penal Code amended this last session which is usually appended as an addendum. It delineates the jurisdiction of the courts and says that between the ages of 15 and 17 you may not try him in any court other than the juvenile court unless he is certified as an adult. It accepts article 8.02(e) of the Penal Code. When you construe article 30 together with the exclusive original jurisdiction section of the statute, minor in possession is just not triable as a finable misdemeanor.

We have advised the probation departments that we are contacted by, when they pick up a kid for minor in possession, book him and make a record of his offense, then turn him loose. You can do this three times. Then you can file on him as a child who is in need of supervision. The difficulty with that is, if the police department is handling him only, and he is never referred to the juvenile department, thoses three offenses may never find that they are in the same out-basket. You may have some problems in enforcement in that regard.

"MORALES VERSUS TURMAN AND RECENT APPELLATE DECISIONS"

The Honorable Joe Dibrell
Chief, Enforcement Division
Attorney General of Texas
Austin, Texas

"MORALES VERSUS TURMAN AND RECENT APPELLATE DECISIONS"

by

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Chief, Enforcement Division
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To this date, I have not met the young lady in the case of Morales versus Turman. The litigation was commenced on February 16, 1971. Max Flusche met Alicia Morales at the beginning of the proceedings and some of the preliminary hearings, but I think he has lost track of her also. Litigation developed into a full fledged class action civil rights suit in the United States District Court for the Eastern District of Texas in which Judge Wayne Justice presides - the class being those youths, or those children, who were committed to the Texas Youth Council.

The actual cause of action was divided into three principle parts. The first cause of action was against the director and against one of the assistant attorney generals alleging interference with the right of the counsel to consult with some of the children at some of the institutions as their clients without any interference. The second cause of action had to do with an attack on certain requirements in reference to due process and commitment procedures by the various juvenile courts throughout the state. This particular cause of action was fully presented to the court prior to January 1, 1973. The third cause of action was the one I actively participated in along with Mr. Flusche, Larry York, our First Assistant, and Tom Choate, a young lawyer in the Enforcement Division. This team of four lawyers actually were involved in the day-to-day trial as well as preparing as quickly as possible for the trial date which was set by Judge Justice in the summer that has just passed.

What will be of particular interest to the juvenile court judges here and to the probation people as well, is to briefly discuss the second cause of action which was actually presented in an order entered by Judge Justice shortly before the first of the year in 1973. Hopefully, every juvenile court judge received a copy of this particular order in which the requirements were set out as far as Judge Justice's order was concerned for the due process requirement in the adjudicatory stage of a juvenile court delinquency proceeding. As a practical matter, I think the new Family Code met the requirements that Judge Justice envisioned in his order requiring the juvenile court judges to follow in the adjudicatory stage of delinquency proceedings.

Consequently, if you are following the code provisions with reference to what is required in reference to the due process requirements in your adjudicating hearing, right of counsel and right to the due process hearing as set out in the code along with your own understanding of what is required by due process, you do not have to look to Judge Justice's order to determine just what you should do. If you follow the Texas requirements that are now set out in the Family Code, you are perfectly safe. The Family Code sets the requirements that you are required to follow and it meets those standards.

To assure you of this, for instance, Section 52.02(b), wherein a person takes a child into custody shall promptly give notice of his action and a statement of the reason for taking the child into custody to the child's parents, guardian, or custodian, and the officer officially designated by the juvenile court. Section 53.01(c) provides that the official or officer who takes custody of the child should promptly give notice of the whereabouts of the child and a statement or reason he was taken into custody to the child's parent, guardian or custodian. Section 53.04 provides that if the preliminary investigation results in a termination that further proceedings are authorized, a petition for an adjudication or a transfer hearing may be made. The petition must set out the time, place and manner of the acts alleged and the penal law or standard of conduct allegedly violated by the act. Section 53.06 provides that the juvenile court shall direct issuance of a summons to the child named in the petition, the child's parents, child's guardian or custodian, the child's guardian ad litem and any other person who appears to the court to be a proper or necessary party to the proceedings. Section 54.01(b) provides that when the detention hearing is held a reasonable notice of the hearing shall be given to the child, the child's parents, guardian, or custodian. So, if you review the code you will find that the code covers the essentials of what Judge Justice entered into his order in December 1972.

Further, requirements that the Miranda warnings are applicable to the juvenile, the right not to make any statement whatsoever that any statement could be used against him or her, and the right to consult with an attorney - all of this is provided for in your new code. I feel this is a closed matter at this point in the litigation, that this particular provision has been fulfilled by the adoption of the New Family Code Title III.

The third cause of action which was the principle part of the litigation, and which testimony and other evidence was given during the six-week trial in Tyler, was a 1983 class action in which the institutional concept came under vigorous attack by the plaintiff's counsel. You should also be aware of the fact that we had as active participants in the trial not only a team of attorneys representing the particular class or plaintiffs, but we also had involved in the litigation the Justice Department of the United States as amici and for all practical purposes on plaintiff's side of the docket.

We also had another amici group which represented several organizations throughout the United States - the American Psychological Association and others. I could not name them all without a list in front of me. What each one of you should understand about this particular class action that was litigated in Tyler was that the plaintiffs came up with a voluminous list of allegations concerning the kind of institutional care that was provided or not provided by the Texas Youth Council. The allegations can be broken down into three groupings. One allegation - the kind of physical facilities that were provided. Another allegation - the inadequacy of certain of the facilities. Another grouping of allegations concerns the kind of actual treatment that was being provided: rehabilitation treatment, medical care, psychiatric care and counseling. This third category also concerned the kind of discipline that was used, certain specific allegations of cruel treatment and affliction of corporal punishment were made in this regard.

After more than six weeks of trial testimony and evidence, I think proof was produced before Judge Justice that would sustain certain parts of his findings with reference to what had actually occurred at these institutions. At the present time, the Texas Youth Council is operating under an interim order entered by Judge Justice; a final order has not yet been entered. We still have the opportunity to present brief and further arguments to Judge Justice before a final order is entered. I am not at liberty to go into detail in this area. I don't think Judge Justice needs to have anything said in advance by the attorneys who are still litigating to a public forum.

QUESTION: What impact did Morales versus Turman have with reference to the new Family Code?

DIBRELL: I think the legislature and the committee who drafted the new Family Code must be given most of the credit and criticism for whatever has occurred as far as the legislature is concerned. There is no order or command by Judge Justice to the legislature per se, even if he had the authority to so order, there was no such order. However, the legislature has seen fit to enact this new family code. The legislature should be properly given the credit as well as the criticism. Whether or not the cloud of a class action suit, which was an attack on the whole philosophy of institutional care of delinquent children, had any influence on the individual legislators, I would not be able to comment on. On Morales versus Turman, you probably have some other questions.

You have read about the effect the interim order has had with reference to the functioning of the Texas Youth Council after August 31, 1973, the date the interim order was entered. The interim order which was issued by Judge Justice had principally to do with how discipline was to be administered at the Texas Youth Council and the institutions. It specifically pointed out certain ways in which discipline should be given. There could still be some lock-ups in the case of an unrulely child.

The one thing Judge Justice made specific reference to was in the issuance of an injunction against the use of any kind of punitive force. Some interpret this to mean that Judge Justice prevented the use of any kind of discipline at these school. Some people at these institutions have so interpreted the order. Ron Jackson, who is with us today, is in a better position to speak on how the institutions are operating under this interim order. The judge also provided for an ombudsman who has been required to make a report to the court as to what has occurred at the youth facilities. One filing cabinet in our office is already filled with reports we have received from the ombusdman.

Now on the question as to what does the Morales case have to do with the new Family Code and with probation. This class action suit does not touch upon probation per se. It has to do with the adjudicatory stage of the juvenile court proceedings and the Youth Council custodial care and the services provided by the Youth Council. In the field of probation, this class action does not touch upon except inferentially and indirectly as an impetus to probation to work for new alternatives in handling people who come within the scope of CHINS or as delinquents. It provides even greater thrust to your obligation as probation directors to seek ways and means in your own community to develop alternatives that would be of assistance to these youth. Because of the new Family Code, the type children that used to be placed in the custody of the Youth Council such as truants and runaways are no longer placed in custody of the council. You, as probation people and judges still have the problem of what to do in these situations. The communities are having to wake up to their own obligations and responsibilities in these cases.

Someone wanted the question answered, what do we mean by rehabilitation? Rehabilitation for a juvenile or for an adult is to put an individual into the frame of mind and under circumstances wherein his behavioral tendencies will become normal at least to the extent that he can function in society and in the real world - to a place where he can actually become a productive member in society.

Someone asked the question, can a child waive his right to rehabilitation? I think he cannot waive the right "to have someone think that he can rehabilitate him." But as a practical matter, no one can be specifically forced to be rehabilitated. The only way a person could be forced to be rehabilitated would be where all the children were taken away from their parents at birth, as envisioned in Huxley's Brave New World and develop them into robots.

Another question: What degree of force can be used under Judge Justice's order? As already mentioned, an injunction has been entered against the use of any punitive force. This injuction created problems with some people in terms of what did he mean concerning the use of force? The order does not prohibit the use of force in one's own self-defense or the use of force to bring some person under control, but it does provide that no more force

than would be absolutely necessary will be permitted. The permissable force is what we all have come to learn and know in criminal law is that degree of foce an individual can lawfully use in protecting himself or another. This amount of force would not be precluded.

Another question: Why is the Texas Youth Council sending problem children back into the cummunity? Obviously, the Texas Youth Council has its own rules and regulations and procedures they are following. You may not like this answer but the problem child is the first one that the community sends to the Texas Youth Council. The Texas Youth Council cannot keep a child beyond a certain age. The child was sent there as a problem child but under some habeas corpus proceedings, the Texas Youth Council has had no alternative but to release the child under the law. Another explanation may be that the council feels the child needs to be back in the community and to have a closer family contact. But that is a question more appropriate for Mr. Jackson to answer than this speaker.

Now someone asked about whether a guardian ad litem would do at the detention stage instead of an attorney? I don't feel a guardian ad litem is a proper substitute for an attorney. An attorney can be appointed if the child cannot afford one. If you have the problem, you should appoint the attorney as the guardian ad litem as well.

Before closing, I want to discuss with you some landmark decisions of the Supreme Court of the United States and conclude my remarks with a discussion of some recent cases. I think everyone should be aware of or is already aware of the case of In Re Gault 87 S. Ct. 1428 (1967). This case pronounced a new set of ground rules and changed the direction of juvenile court administration in this nation. In Re Gault set out the basic due process rights that are required of all juvenile courts. This case is the grand-daddy of all the cases that followed. Following In Re Gault decision, we have the case of In Re Winship 90 S. Ct. 1068 (1970) and Ivan v. The City of New York 92 S. Ct. 1951 (1972) which stressed the fact that the burden of proof required in a juvenile court proceeding is proof of delinquency beyond a reasonable doubt and that proof by only a preponderance of the evidence is not satisfactory. The court stressed this burden of proof requirement in the case of In Re Winship when the court held that proof of a criminal charge beyond a reasonable doubt is constitutionally required in a juvenile proceeding. Speaking through Justice Brennan, the Supreme Court went on to compare and show that a juvenile court proceeding is subject to the same basic standards and safeguards of due process as an adult trial. In Ivan v. The City of New York, the Supreme Court made In Re Winship retroactive and for this reason it became the foundation for the habeas corpus case that was tried in the Travis County District Court styled In Re Hicks.

The case of In Re Hicks was a habeas corpus proceeding seeking the release of all juveniles who had been committed on a standard of proof less than beyond a reasonable doubt standard. Max Flusche of our office represented the state. In this case, numerous juveniles were ordered released from the Texas Youth Council by Judge Charles Matthews because they were committed by a standard of proof of "preponderous of the evidence" rather than by a standard of proof "beyond a reasonable doubt."

Kent v. The United States 86 S. Ct. 1045 (1966) is a pre-In Re Gault decision which, however, is still the law in so far as constitutional requirements with regards to jury trials in juvenile proceedings. The case hold that a jury trial in juvenile proceedings is not required. Of course, this is not the law in Texas because Texas provides for a jury trial in juvenile proceedings. The Supreme Court in Kent reasoned that juveniles do not possess the right to a jury trial because the right to a jury would turn the juvenile court into a full blown adversary proceedings. For those of you who are interested in a good summary of the United States Supreme Court's decisions in the area of due process in juvenile proceedings, I suggest you read the case of McKeiver v. Pennsylvania 91 S. Ct. 1976 (1971). This case will give you a good thumbnail review of all the Supreme Court decisions up to the date of the opinion affecting the area of juvenile court justice. It gives a good sketch of what due process requirements are all about and what is required of you by the United States Supreme Court.

Some have asked: What can you do if the commissioner's court will not provide detention facilities, where the commissioner's court is violating an express mandate of the legislature? Judge Farris mentioned the inherent power of the court to command compliance. I would be hesitant to recommend such a procedure, knowing the political facts of life. You do have the power and the authority to refuse to commit a child to a particular facility that is inadequate.

Another question was raised: What can we do to revise this code? First of all, I think we need to make an attempt to understand and live with this new code and try to apply it fairly to provide a proper administration of criminal justice in this state for juveniles as well as adults. Then if you find provisions that need to be changed because they are not fulfilling the need of providing the kind of treatment, care and supervision that you feel is necessary, then seek change in the legislature. If you find that certain provisions are a hindrance, keep track of them. Visit with your own individual legislators and bring these problems before them. But have your facts with you when you do. They will appreciate you more if you have the facts.

Someone wanted to know about run-aways from the Texas Youth Council. Can any law enforcement officer in the state pick up a runaway? Of course they can. However, the Texas Youth Council is responsible for picking them up and returning the runaway to the facility.

The last question on my agenda that was given to me is: How do you appeal an early release from the Texas Youth Council? I don't think you can appeal it. You might want to go to the legislature if you have some problem in this area. Under the law, the Texas Youth Council has to make that determination themselves. The Texas Youth Council has been given that responsibility and authority by the legislature.

In conclusion, the Texas Youth Council has not been found to be inadequately treating a child. Judge Justice's interim order states that certain practices were objectionable and he entered certain injunctive orders for the protection of the children under certain circumstances. To date however, there has not been a finding of inadequacy of the treatment facilities provided by the Texas Youth Council.

I believe that any further questions about procedure should be directed to Ron Jackson, the Director of the Texas Youth Council.

Thank you for being so attentive.

"THE TEXAS YOUTH COUNCIL AND TITLE III"

Ron Jackson
Executive Director
Texas Youth Council
Austin, Texas

"THE TEXAS YOUTH COUNCIL AND TITLE III"

by

Ron Jackson
Executive Director
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Austin, Texas

For the past three years the Texas Youth Council has been in a state of turmoil, mostly as a result of the Morales versus Turman case. Also there have been a number of changes in our society. There is a lot of criticism in regard to institutions but there are some good things to be said about them. However, we are going to try to come up with some alternatives to institutions. My comments probably will create some confusion in this area since you are thinking we made a decision; we committed that child, we think we know what is best becuase we are working with him. We send him to your institution and that is the last alternative.

In August, The Texas Youth Council changed administration. Mr. W. Forrest Smith, an attorney from Dallas, is presently the chairman of the Texas Youth Council. We also have two new board members - Mrs. Pat Ayres from San Antonio and Don Workman from Lubbock. With a new chairman, two new board members and a new executive director, you are certain to have some confusion.

We are trying to plan a program that will meet the needs of the youth in state of Texas. My training is closely tied to institutional care, but that is only one alternative. I am more interested in the best possible placement and the best possible care for the child himself - the child as a person, not a problem.

Currently one of the biggest problems in the Texas Youth Council is our low student population. It is a problem because we have a large staff and a high cost. It's good because it will give us time to regroup, to begin new programs and to insist on needed changes within these institutions. Institutions have traditionally been custodial-care programs. We are quick to criticize this, but institutions are what the United States and the state of Texas wanted. Some still feel that institutions are the only alternative. Nevertheless, at one time we felt institutions were the best alternatives. Now, we must move beyond that.

We no longer have the 18 year-olds in the institutions; they have become adult. You have the CHINS; we don't. We are glad to give them to you while we regroup. There are many problems in dealing with

these kids. They are some of the hardest to cope with because they run-away and don't want to go school. We also lost some 500 kids who were improperly committed to the Texas Youth Council; 200 were within our institutions and 300 within our parole area.

What concerns me and concerns the institutions is the reluctancy on the part of the community and the courts to commit the children to the Texas Youth Council. They no longer have confidence in TYC. Hopefully, we can restore that confidence, once our programs become effective.

We are concentrating on getting our own house in order. I have been acting director for a little more than four months and have spent one week as executive director. We are beginning treatment programs. We have contracted with Harry Vorrath to bring in Positive Peer Culture. It is a proven program that has been used effectively in several states. If this program is successful, hopefully we will no longer need fences around the Mountain View school.

Another thing we want to do within our institutions is to begin to regionalize and make them co-educational. A co-educational program creates all kinds of problems. However, I feel a co-educational institution does create a desirable normal environment. You are certainly going to have the same kind of problems in regard to sex - that's the first thing that comes to everyone's mind. There is the possibility in co-educational institutions that pregnancy may occur. However, we can work with this.

The three co-ed institutions are Gainesville, Giddings, and Brownwood. Brownwood is already co-ed and has been for about a month. We hope to bring the families closer to these particular three institutions so we can begin to do family therapy. We also want to get our people within the community to work on some of the problems within the community; I am talking about the institutional people. We hope to cut down the distance the families have to travel, thus making accessibility easier. Institutions, or training schools as they have been called, must be reorganized to serve a smaller population in a more humanized and personalized way while offering relevant treatment services to those children who need to be removed from the community.

In addition to getting our own house in order, we will also be involved in the reorganization of the Texas Youth Council administration. Within the next month, we plan to have a deputy director in charge of community-based programs. We have already instituted an Ombudsman for the purpose of guaranteeing that the rights of the children within the Texas Youth Council will be protected. I expect more personnel changes within our institutions.

One of the most important things we hope to accomplish is a master plan for juvenile corrections in Texas. Some of the objectives of this plan are to be a study evaluation of Texas Youth Council programs. How can the Texas Youth Council develop community based alternatives while still insuring the safety of the community? What kind of state-wide direction and assistance is needed for local probation services for youth in trouble? In a state the size of Texas, one important problem is how can we best regionalize our services. Do we build, as some have suggested, regional diagnostic centers or do we use available resources among the region and just coordinate the services? These are just some of the objectives to which this grant will address itself. However, we can't wait for the study because the time is ripe now for change. In our future planning - next month, two months, prior to the next legislature - we will look at all alternatives to institutions and regional services.

How can we deal with our existing resources? Before I get into that there are some basic assumptions I feel we can all agree on; I want to share them with you.

1) The individual has the right to appropriate treatment in human care.

2) Society's best protection is to provide appropriate treatment for the individual.

3) Children be they juvenile delinquents, CHINS, or D&N present a variety of different problems and hence a wide range of alternative treatment approaches are required to meet these needs.

4) Are large institutions cheaper? Isn't it possible in some instances that smaller residential facilities can be operated more effectively and at a lower cost?

5) If reintegration of an individual from an institution into a community is a major problem and the larger portion of the population can be treated either in a non-residential treatment or a community based residential treatment program, wouldn't it be feasible to keep the child in the community?

Let me mention alternatives that the Texas Youth Council will be involved with during the next two years. This directly concerns the TYC staff and its programs. Some of these alternatives are non-residential supportive services related to the individual child's needs and only for the period of time needed, such as tutors for special-education programs, medical problems, big brother programs, home-makers - these are non-residential supportive services. TYC is not currently involved in these services.

We do have foster care, but I am concerned that we can only pay $77.00 a month and some foster children can be very difficult. What can we do to increase this rate to place difficult adolescent delinquent children in foster care? I hope to get more involved in this. We have the authority but have done very little about it. We hope to become more involved in contracting with small group homes such as the Settlement Club Home in Austin. In a number of cases, some are more successful than institutions, provide a much better environment for the child, and are available within the community.

We are now in the process of planning a wilderness camp program and hopefully we can use some existing land for such camps. We are talking now about a project for fifty kids who are emotionally disturbed local children who can best be helped in a wilderness camp setting. We have already organized Adventure Trail programs, with the assistance of the Dallas Girls' Adventure Trails. Giddings is in the process of establishing their own Adventure Trails program. We don't want to limit the Adventure Trail program to our institutions. We hope very soon to be into a preventative program that will be located within a community.

Another thing we want to do is use existing private residential care centers. There are a number across the state; however, it is surprising how few will admit TYC kids. If we can obtain the needed monies, perhaps we can encourage them to accept our kids. This may make a difference. We would like to keep the children within their area, as often as possible.

Prior to the next legislative session, and I hope you will work with us on this, we want to expand the role of our parole officers. At present, the Texas Youth Council feels that the parole officers provide much of the supervision of the children who are released from institutions. I think their role could be expanded. I am not suggesting they assume the role of the probation department. Prior to coming out of the institution into the community, the parole officer should provide many more services. We would like to see the parole officer become, for purposes of communication, TYC's liason person with the courts. We hope that if the monies are available, the parole officer would be able to work with the courts in preventing commitments and even possibly, if they are committed, to provide an alternative program of treatment instead of coming into one of the institutions.

Ideally all these things sound good, but some kids can't function in anything but an institution. It takes time to get these kids to pay attention and to get them to work. The most difficult are the CHINS. You can place them in every residential care facility within the city of Dallas and I guarantee some will run-away overnight.

You will finally remove them from the community and you will sometimes get their attention. They are very difficult to work with. Ideally, we would like to see the parole officers become after-care workers: people who would function as service managers responsible for securing appropriate services to meet the needs of the children. Hopefully, the parole officers would determine how the Texas Youth Council could provide certain services and help arrange for other services of state, local, and other private agencies.

To accomplish any of these goals, it is going to take a great deal of communication. I don't know how to suggest ways we can best work together on this. I know we are working with some of the probation departments in the state of Texas, but we would like to improve the role of the parole officer as the liaison between the Texas Youth Council and the communities. To help improve their role, we have set aside $30,000 for in-service training programs that will begin within the next month. I strongly emphasize the need for many frequent meetings between the Texas Youth Council, probation, judges and the communities.

We will have our first newspaper release this month from the Gatesville school. The purpose of the newspaper release is to inform you on a monthly basis what is happening within the Texas Youth Council system. Maybe there is a need for the Texas Youth Council to sponsor as we have had in Brownwood in the past, a yearly judges and probation workshop - statewide to discuss mutual problems and solutions.

I say that our agency is ready to face the challenge of providing the best possible youth care in Texas. We are extremely concerned with our high cost, and we are also concerned with the need of protecting the communities from children who need to be removed. I feel, at this point, that we must all work toward a common goal of providing the best alternative rather than the only alternative - an institution.

CONTINUED

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Texas Juvenile Justice Conference
Austin, Texas, January 31, and February 1, 1974

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Probation Officer
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Texas Juvenile Justice Conference
Austin, Texas, January 31, and February 1, 1974

Judges Participant List

The Hon. O'Neal Bacon
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1st Judicial District
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The Hon. Davis Bailey
County Judge
Panola County
Carthage, Texas

The Hon. Jack Blackmon
District Judge
1st Judicial District
Corpus Christi, Texas

The Hon. Henry Braswell
District Judge
6th Judicial District
Paris, Texas

The Hon. C. L. Chance
County Judge
Williamson County
Georgetown, Texas

The Hon. Temple Driver
District Judge
1st Judicial District
Wichita Falls, Texas

The Hon. William Earney
District Judge
83rd Judicial District
Marfa, Texas

The Hon. Jim Farris
County Court at Law No. 2
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The Hon. Phil Fugitt
County Court of Law
Greenville County
Greenville, Texas

The Honorable J. Garrett
County Court of Law
Victoria, Texas

The Hon. Joseph Gladney
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The Hon. H. D. Glover
County Judge
Reeves County
Pecos, Texas

The Hon. Phillip Godwin
County Judge
Ector County
Odessa, Texas

The Hon. Grover Halliburton
County Judge
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Court of Domestic Relations
Borger, Texas

The Hon. Jack Holland
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JUDGES PARTICIPANT LIST (cont.)

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The Hon. Sam Houston
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211th Judicial District
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The Hon. William A. Hughes, Jr.
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235th Judicial District
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The Hon. Billy Hullum
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Van Zandt County
Canton, Texas

The Hon. Bun L. Hutchinson
District Judge
5th Judicial District
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The Hon. Terry Jacks
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22nd Judicial District
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Court of Domestic Relations
Angleton, Texas

The Hon. Stanley Kirk
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78th Judicial District
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The Hon. Weldon Kirk
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32nd Judicial District
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The Hon. Don Lane
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42nd Judicial District
Abilene, Texas

The Hon. Wardlow Lane
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123rd Judicial District
Center, Texas

The Hon. Wayne Lawrence
District Judge
3rd Judicial District
Pale, Texas

The Hon. M. C. Ledbetter
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121st Judicial District
Morton, Texas

The Hon. Bill Logue
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19th Judicial District
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The Hon. Marvin London
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25th Judicial District
Sequin, Texas

The Hon. Charles Sherill
District Judge
112th Judicial District
Ft. Stockton, Texas

The Hon. Earl Smith
District Judge
92th Judicial District
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The Hon. Henry Strauss
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63rd Judicial District
Del Rio, Texas

The Hon. W. C. Wallace
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20th Judicial District
Cameron, Texas

The Hon. James Warren
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County Judge
Cooke County
Gainsville, Texas

CONFERENCE EVALUATION

The evaluation consists of the participants evaulation and a written report by an outside evaluator.

The following tables represent the degree of participant satisfaction for the two days of the conference.

Evaluation forms consisting of a seven-point rating scale were filled out anonymously at the end of each day by the participants. The frequency distribution is shown along with the mean on each training module offered at the conference.

The forms had several open-ended questions to allow for participant comments. The evaluation by Ernie Bachelor, Project Manager for Training the Trainers Project sponsored by the National Institute of Corrections and the California Youth Authority, discusses these comments.

TABLE I

FREQUENCY DISTRIBUTION AND MEAN
PARTICIPANTS' EVALUATION

Thursday, January 31

ITEM	7	6	5	4	3	2	1	MEAN
Usefulness Overall Workshop	40	24	8	0	0	0	0	6.4
Overview of Title III	50½	17½	4	2	0	0	0	6.7
Discussion Groups: Judges and Probation Officers	25	26	17	1	0	0	1	5.7
Panel Discussion	28	24	19	1	1	0	1	6.0
Probation Officers Task Groups	21	32	17	1	3	0	0	5.9
In-Basket Exercises	21	22	15	6	2	0	0	5.8

The mean is figured on a seven (7) point rating scale ranging from very positive (7) to very negative (1).

TABLE II

FREQUENCY DISTRIBUTION AND MEAN
PARTICIPANTS' EVALUATION

Friday, February 1

ITEM	7	6	5	4	3	2	1	MEAN
Usefulness Overall Workshop	35	20	2	0	0	0	0	6.5
CHINS and Mental Retardation	19	23	14	2	0	0	0	6.0
Morales vs. Turman, Recent Decisions	20	16	16	3	0	0	0	5.8
Texas Youth Council	37	16	4	0	0	0	0	6.6
Panel and General Discussion	29	19	5	1	1	0	0	6.3

The mean is figured on a seven (7) point rating scale ranging from very positive (7) to very negative (1).

E V A L U A T I O N

JUVENILE JUSTICE TRAINING CONFERENCE
Austin, Texas

PRECONFERENCE:

Sensing

Sensing for the conference was accomplished in two ways: 1) individual interviews and discussions with medium and middle sized probation department staff, 2) utilizing the Crawford Card Technique with selected personnel.

Comments: The sensing material was effectively used for 1) the selection of speakers that were well qualified in their fields and familiar with their topics, 2) outlining the content of the presentations and panels, 3) small group exercise design, and 4) in the development of hand-out materials that related to the conference content and could serve as a back home reference.

Not all of the topics selected were of equal value to the participants but, it provided conference balance and covered all the agenda items that were discovered in the sensing process.

Preparation

Sensing material was provided to the conference speakers and generalized to allow them to focus their presentations. Small group exercises were designed to allow for interaction. They were designed so that high priority items occurred early in the exercises to be dealt with first and as the task unfolded, the group could move down to the lesser priority items as they had time.

Conference staff gathered the evening prior to the program for an orientation that included last minute changes in the conference content, logistics (registration, room assignments, in-kind match, hand-out material was discussed). Roles were clarified (who had primary responsibility, who worked with whom).

Comments: Preparation for the conference was excellent. This was displayed by the manner in which the speakers focused their presentation on material that was of extreme interest to the majority of the participants, by the specific design of instruments to facilitate interaction in the small groups that related to the material presented by the speakers, and by the cooperative efforts of the staff. Preparation in the orientation of the persons involved in the role playing could have been improved. Role players had a tendency to become

involved in their acting, not the process and content. There was also discussion among the judges about the preparation of facilitators for their separate portion of the conference and the coordination of hand-out material.

Conference Design

The conference was designed so participants could hear formal didactic presentations by experts on subjects obtained from the sensing techniques. Participation in the group exercises were assigned by size of departments so both judges and probation officers in similar situations would have an opportunity to work out decisions and discuss issues that were relevant to them. The in-basket exercises were also structured so that key issues would have to be covered first. Other issues were included in priority order in the exercises that could be covered if time were available. The panelists were scheduled to allow for discussion on points generated by the speakers and the exercises. A role playing demonstration was scheduled for each group to demonstrate additional points. One group was assigned the task of developing a sample guideline that could serve a variety of departments in the state. Judges and probation officers were assigned to each group to assume hetergeneous participation.

Comments: Workshops were somewhat disorganized because of the number of people in the room. Room changes and the design of the conference in the evening contributed to the dropping out and loss of people to the minor extent that it did occur. A great deal of activity and movement was consolidated into a short period of time. The variety of training experiences took place the first day while the second day was heavy with formal presentations. The fact that the participants maintained their good humor and participated the first day demonstrates the interest and the validity of the design that allowed for a variety of involvement learning experience.

Participant Comments:

- group should be smaller
- tiring
- moretime between workshops
- all very good
- cut some time, more time between sessions
- not more than one judge in each task group
- key questions should be pursued in small groups, problem areas of cope which need interpretation and clarification
- groups too large
- too much variation in county resources and ability, too much needs of children, should be documented and issue court and probation personnel

CONFERENCE:

Attractive, comprehensive hand-out materials were part of the registration package. The initial formal presentations for the conference presented material on the content and intent of the new Family Court Code. Primary interest, as represented by questions from the audience, was on children in need of supervision. Each formal presentation allowed for discussion and questions from the floor. Conferees after the first formal session were moved into small groups that were divided by size of county. So, judges and probation officers from similar jurisdictions addressed tasks relevant to them. Facilitators oulined the tasks to be accomplished and served as a resource to help the conferees become involved in the process. In the late afternoon, the conference divided to allow the judges to have their own conference. The evening session was a combination of single and a double conference that used a series of role playing on detention hearing to deal with the detention process. It was followed by panel discussion. Groups worked well until after 9:15 in the evening. Friday the conference design was didactic presentations. Attendance depended upon the particular speaker.

Because of the gas shortage and the need for people to travel, the conference was cut short because people had to travel in the daylight hours when service stations were open.

Comments: Many participants commented on their willingness to sit for the full two days and receive information via formal presentations and questions. Two speakers (see comments below) were singled out for most of the individual comments. Structure within the formal presentations were somewhat confused, i.e., should the speakers respond to questions and build his discussion from that or did he have a responsibility to complete his prepared remarks.

Interaction within the small groups was facilitated by conference staff. Staff worked well as a team even though each "team" had an individual style in structuring their group. They modified groups to increase participation and clarified tasks and performed a useful role in the group process. Each group varied but generally judges and probation officers participated equally. One judge conferee expressed his pleasure in being able to explore ideas and procedures with probation who did not have to work with him. The noise level was noticeable in the group rooms but most participants were task oriented and it did not affect participation. The small group at the judges conference had difficulty identifying their tasks. They were 1/3 effective in relating to the conference objectives. One group told "war stories", one utilized a knowledgable participant to discuss probation adoption procedures, and the third followed the conference design. The special group to design guidelines became more effective the second day. They originally had some trouble in establishing the perimeters of their task.

Panels felt presenting effectiveness depended upon the groups agenda, the knowledge available within the panel, and their willingness to be honest with each other (panelists and the group). Not all panels were able to generate useable information but they did provide a different form of interaction that allowed the total group to share some of the information that came from the interaction of the small groups.

Role playing was interesting as a conference training technique. As mentioned, some of the participants got caught up in the acting and didn't provide much useable material for the discussions. The role players tended to be long and the debriefing (which was ignored in one group) was limited by time. The total potential for learning was not realized. The scheduling also affected the evening panels because some panelists had to leave to play roles.

A major difference was the inability to utilize the questions and responses generated by the groups and panel and share them with the whole conference. For example, several issues were raised but because recording capability was not available, the issues were lost. Several questions were asked that panelists were unable to answer did not come up again. Some groups came to decisions within the group that were contrary to the points made in the formal presentations. It would have been beneficial to have been able to raise these points during the second day sessions for further clarification.

Participants Comments:

- more people who can answer questions
- someone who can say how appellate court would act
- what was offered was good, more of the same
- definite answers to answers relating to the duties of the probation department
- less direction form staff, too many times haggling over meaningless issues
- more of Ray Brill and Bob Dawson, not as much work done as might have been in mid-afternoon
- detention hearing followed by critique could have been more effective, liked idea but it fell a little flat
- enjoyed feedback and conversation
- if working on hypothetical cases such as we have today, I feel they should be sent to the probation department so we can get a more complete understanding of what is happening throughout the state

Participants like more of:

- report and critique of panel
- discussion groups
- overview Title III
- group work
- Ray Brill and Bob Dawson
- sample hearing of cases
- overview of Title III by speaker
- small groups
- questions and answers
- overview: experts opinions
- possibility - things to come
- demonstration (detention hearing)
- speakers (Title III)
- task groups
- depth explanation of Family Code
- task force questions and solutions
- Bob Dawson and questions from floor
- group reporting
- discussion of code
- Title III explained
- actual samples (detention hearing)
- workshops
- visiting with fellow probation officers with similar problems
- all
- acting out

Participants like less of:

- discussion groups (judges/probation)
- panel discussions
- relations of specific cases you handled and more information on theory and procedure
- critique by panel
- group discussions (groups, speeches, detention hearing)
- overview (Title III)
- too long for one day
- group task

Evaluation Results

The evaluation forms filled out for Thursday indicated that material presented Thursday was extremely useful. The speakers on Title III and the judges/probation discussion group received the highest rating, 95% good or excellent. The panel groups, the panel discussion, and the task groups were seen as being good or excellent by 70-75% of the participants and the critiqueing by the panel was seen as good or excellent by 67% of the participants.* 96% of the people indicated on Friday's forms that the overall usefulness of the workshop was good. This high trend continued specifically for the discussion on CHINS, mental illness, and retardation, 87%; the Turman versus Morales, 67%.

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* the rating scale of: 7 6 5 4 3 2 1 is translated as follows:
7=excellent, 6=good, 5=fair, 4=neutral, 3=poor, 2=bad, 1=terrible

Comments on Conference Participation: Participation throughout the conference was excellent. Most participants arrived, registered and were in the conference room well before the 11:00 starting time. The room was full with people standing. Questions were generated from the floor for each of the formal presentations. People referred to the resource material during the presentation and either took notes or made notations on the handout material that was provided. Each session started close to on time and there was very little drop off in attendance even with the somewhat complicated room changes. Small groups participated throughout the conference were observed leaning in to participate and appeared task oriented. The evening sessions which were somewhat less formally structured maintained an excellent level of attendance and many groups were still working at 9:15 in the evening. Friday morning with the conference starting at 8:30, 75% of the conference room was full at the start and within a few minutes it was filled completely with people standing in the hallway again.

Comments on the Total Conference: The conference was well designed and its execution related to: 1) the needs of participants and 2) the objectives of the conference as set forth by the conference coordinator. The format included multiple ways of increasing information sharing, participation and learning. Material provided was useful at the conference and as a back-home resource. 88% on Thursday and 96% of the participants on Friday expressed their feedback to the conference by rating the utility of the conference overall as good or excellent.

The conference coordinators should be commended for providing such a well designed and well executed conference.

Ernest S. Bachelor, Project Manager
Training the Trainers Project
Correctional Training Program
Sponsored by National Institute of
Corrections and the California
Youth Authority

END