

PART TWO: OTHER OFFENSES COMMITTED BY JUVENILES

1. Courts.

Justice and municipal courts have jurisdiction of offenses committed by juveniles that are punishable by fine only. Effective 9-1-2011, this jurisdiction includes the offense of “Electronic Transmission of Certain Visual Material Depicting Minor” committed by a person who is 17 years of age.

Generally, a misdemeanor case to be tried in a justice court shall be tried (i) in the precinct in which the offense was committed, or (ii) in the precinct in which the defendant resides. In Harris County, a misdemeanor case to be tried in a justice court may also be filed in a precinct adjacent to the precinct in which the offense was committed.

TEX. CRIM. PROC. CODE §4.12.

The Harris County Justice Courts are served by juvenile case managers. The Harris County Commissioners Court has required a defendant convicted of a fine-only misdemeanor offense in the Harris County Justice Courts to pay a juvenile case manager fee not to exceed \$5 as a cost of court.

TEX. CRIM. PROC. CODE §102.0174.

2. Procedures Applicable to “Other Offenses Committed by Juveniles.”

A. Jurisdictional limitations. Unless a court has implemented a juvenile case manager program, the court shall waive its original jurisdiction and refer a child to the juvenile court if the child has previously been convicted of:

- (i) Two or more misdemeanors punishable by fine only, other than a traffic offense;
- (ii) Two or more violations of a penal ordinance of a political subdivision, other than a traffic offense; or
- (iii) One or more of a misdemeanor punishable by fine only or violation of a penal ordinance of a political subdivision, other than a traffic offense.

A court that has implemented a juvenile case manager program may, but is not required to, waive its original jurisdiction.

“Electronic transmission of certain visual material depicting minor.” However, a justice or municipal court is required to waive its original jurisdiction and refer a child who is younger than 17 years of age who is charged with “electronic transmission of certain visual material depicting minor” to the juvenile court. Justice Courts have jurisdiction of this offense if committed by a person 17 years of age.

TEX. FAM. CODE §51.08.

Dismissal under Sec. 8.08, Texas Penal Code. On the court’s own motion, or on motion by the State, the Defendant, or a person standing in parental relation, and after notice to the State, a justice court must determine whether probable cause exists to believe that a child charged a misdemeanor punishable by fine only, (1) lacks the capacity to understand the proceedings in criminal court or to assist in the child’s defense and is unfit to proceed; or (2) lacks substantial capacity either to appreciate the wrongfulness or the

child's own conduct or to conform the conduct to the requirements of the law. If a court determines that probable cause exists for this finding, the case must be dismissed.

On the filing of a complaint against a child alleging a violation of a misdemeanor punishable by fine only, a court must waive original jurisdiction and refer the child to juvenile court if the court or another court has previously dismissed a complaint under Sec. 8.08, Texas Penal Code.

- B. Reporting requirements. The justice court in which there is pending a complaint against a child must notify the juvenile court of the pending complaint and must also furnish the juvenile court a copy of the final disposition of any matter for which the court has not waived its original jurisdiction.

TEX. FAM. CODE §51.08.

- C. Capacity to Commit an Offense. A person who is at least 10 years of age but younger than 15 years of age is presumed incapable of committing a misdemeanor punishable by fine only – other than an offense under a juvenile curfew order.

This presumption may be refuted if the prosecuting attorney proves to the court by a preponderance of the evidence, that the child had sufficient capacity to understand that the conduct engaged in was wrong at the time it was committed. The prosecution is not required to prove that the actor knew that the act was a crime or knew the legal consequences of the offense when the act was committed.

TEX. PENAL CODE §8.07.

3. **Filing a case for offenses other than “failure to attend school” committed by juveniles.**

A case charging a juvenile with an offense, other than “failure to attend school,” or a “school offense,” may be initiated by either a citation or by the filing of a complaint. Citations and complaints should each be accompanied by an affidavit of probable cause.

- A. School Offense. A “school offense” means an offense committed by a child enrolled in a public school that is a Class C misdemeanor other than a traffic offense, and that is committed on property under the control and jurisdiction of a school district.

“Child” means a person who is (1) at least 10 years of age and younger than 17 years of age; and (2) charged with or convicted of an offense of which a justice or municipal court has jurisdiction.

TEX. EDUC. CODE §37.141

A peace officer may not issue a citation to a child enrolled in a public school, for an offense that is a Class C misdemeanor other than a traffic offense, and that is committed on property under the control and jurisdiction of a school district.

TEX. EDUC. CODE §37.143

A peace officer may not issue a citation or file a complaint for conduct by a child younger than 12 years of age that is alleged to have occurred on school property or on a vehicle owned or operated by a county or independent school district.

A peace officer may not issue a field release citation in place of taking a child into custody for an offense punishable by fine only, or for public intoxication, committed by a

child younger than 12 years of age that is alleged to have occurred on school property or on a vehicle owned or operated by a county or independent school district.

If a peace officer files a complaint for conduct committed by a child 12 years of age or older that is alleged to have occurred on school property or on a vehicle owned or operated by a county or independent school district, the officer must submit to the court the following:

- the offense report,
- a statement by a witness to the alleged conduct, and
- a statement by a victim of the alleged conduct, if any.

The prosecuting attorney may not proceed in a trial of an offense unless the peace officer has provided the above documents.

TEX. CODE CRIM. PROC. §45.058

- B. Complaint for school offense. A complaint alleging the commission of a “school offense” must be sworn to by a person who has personal knowledge of the facts giving rise to probable cause to believe that an offense has been committed.

The complaint must be accompanied by a statement from a school employee

(i) stating whether the child is eligible for or receives special services for children with disabilities, and,

(ii) for the offenses of “disruption of transportation,” “disruption of class,” and “disorderly conduct by (a)(1) abusive language, (a)(2) offensive gesture, (a)(3) unreasonable odor, (a)(4) threat, or (a)(5) unreasonable noise,” the graduated sanctions, if any, that were imposed on the child before the complaint was filed. Graduated sanctions are not required for the “disorderly conduct by (a)(6) fights with another in a public place.

After a complaint is filed, a summons will be issued as provided in Art. 45.057(e), TEX. CRIM. PROC. CODE.

TEX. EDUC. CODE §37.146.

- C. Prosecuting attorneys for school offenses. A prosecuting attorney may adopt rules for the filing of complaints for school offenses that the prosecuting attorney considers necessary in order to determine whether there is probable cause to believe that the child committed the alleged offense, to review the circumstances and allegations in the complaint for legal sufficiency, and to see that justice is done.

TEX. EDUC. CODE §37.147.

4. Provisions Relating to “Electronic Transmission of Certain Visual Material Depicting Minor”

“Electronic transmission of certain visual material depicting minor.” A case charging “electronic transmission of certain visual material depicting minor” may be filed in justice court only against a person who is 17 years of age. A referral to juvenile court is required if the child is 10 years of age and under 17 years of age.

5. Provisions Relating to “Disorderly Conduct,” “Disruption of Class,” and “Disruption of Transportation.”

- A. “Disorderly conduct.” “The elements of “disorderly conduct,” committed in a public place, under sections (a)(1) using abusive, indecent, profane, or vulgar language, or (a)(2) making an offensive gesture or display, or (a)(3) creating a noxious and unreasonable odor by chemical means, or (a)(5) making unreasonable noise, or (a)(6) fighting with another, do not apply to a child who, at the time of the commission of the conduct was a student younger than 12 years of age and the prohibited conduct occurred at a public school campus during regular school hours.

The elements of “disorderly conduct” under section (a)(4) abuses or threatens a person in a public place in an obviously offensive manner does apply to a child who was a student younger than 12 years of age at the time of the commission of the conduct.

“Public place” includes a public school campus or the school grounds on which a public school is located.

TEX. PEN. CODE §42.01.

- B. “Disruption of class.” *Except a person younger than 12 years of age, a person commits an offense if the person intentionally disrupts the conduct of classes or other school activities on school property or on public property within 500 feet of school property.*¹

“Disruption of class.” *A person other than a primary or secondary grade student enrolled in the school, commits an offense if the person intentionally disrupts the conduct of classes or other school activities on school property or on public property within 500 feet of school property. It is an exception that, at the time the person engaged in conduct prohibited under that subsection, the person was a student in the sixth grade or a lower grade level.*²

“Disrupting the conduct of classes or other school activities” includes:

- (A) emitting noise of an intensity that prevents or hinders classroom instruction;
- (B) enticing or attempting to entice a student away from a class or other school activity that the student is required to attend;
- (C) preventing or attempting to prevent a student from attending a class or other school activity that the student is required to attend; and
- (D) entering a classroom without the consent of either the principal or the teacher and, through either acts of misconduct or the use of loud or profane language, disrupting class activities.

“Public property” includes a street, highway, alley, public park, or sidewalk.

“School property” includes a public school campus or school grounds on which a public school is located and any grounds or buildings used by a school for an assembly or other school-sponsored activity.

¹ SB 393, 83rd Legislature. If amendments to the same statute are enacted at the same session of the legislature, one amendment without reference to another, the amendments shall be harmonized, if possible, so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment prevails. The date of enactment is the date on which the last legislative vote is taken on the bill enacting the statute. The Senate concurred in House amendments on May 23, 2013.

² SB 1114, 83rd Legislature. SB 1114 passed the House on May 20, 2013.

The offense is a Class C misdemeanor.

TEX. EDUC. CODE §37.124.

- C. “Disruption of transportation.” Except a person younger than 12 years of age, a person other than a primary or secondary grade student commits an offense if the person intentionally disrupts, prevents, or interferes with the transportation of children (i) to or from school on a school vehicle or (ii) to or from an activity sponsored by a school on a school vehicle.³

“Disruption of transportation.” A person other than a primary or secondary grade student commits an offense if the person intentionally disrupts, prevents, or interferes with the transportation of children (i) to or from school on a school vehicle or (ii) to or from an activity sponsored by a school on a school vehicle.

It is an exception that, at the time the person engaged in conduct prohibited under that subsection, the person was a student in the sixth grade or a lower grade level.⁴

An offense is a Class C misdemeanor.

TEX. EDUC. CODE §37.126.

- D. Graduated sanctions. A school district that commissions peace officers may develop a system of graduated sanctions to be imposed on a child before a complaint is filed against the child for the school offenses of “disorderly conduct,” “disruption of class,” and “disruption of transportation.” Graduated sanctions may require:
- (i) a warning letter to the child and the child’s parent or guardian describing the offense and explaining the consequences for additional misconduct;
 - (ii) a behavior contract with the child signed by the child, the parent or guardian, and a school employee that describes the behavior that is required or prohibited and the penalties for additional alleged school offenses, including disciplinary action or the filing of a complaint;
 - (iii) the referral of the child and if necessary, the child’s parent or guardian, to counseling, community based or other services; and
 - (iv) the performance of school-based community service by the child.

6. Dispositional Procedures.

- A. In general. A court is required, except as otherwise provided, to use the procedures and exercise the powers authorized by Chapter 45, Code of Criminal Procedure.
- B. Dispositional procedures for the offense of “electronic transmission of certain visual material depicting minor.” If the court finds that a defendant, 17 years of age, has committed the offense of “electronic transmission of certain visual material depicting minor,” the court may enter an order requiring the defendant to attend and successfully complete an education program on the dangers of students sharing visual material depicting a minor engaged in sexual conduct. The course must meet the requirements of Sec. 37.218 of the Texas Education Code. The defendant or the defendant’s parent is

³ SB 393, 83rd Legislature. The Senate concurred in House amendments on May 23, 2013.

⁴ SB 1114, 83rd Legislature. SB 1114 passed the House on May 20, 2013.

required to pay the cost of attending such an educational program if the court determines that the defendant or the defendant's parent is financially able to make the payment.

TEX. CRIM. PROC. CODE §45.061.

7. Obligation to Provide Current Address and Residence of Child.

- A. Obligation to provide address. A child and parent required to appear before the court have an obligation to provide the court, in writing, the current address and residence of the child. The current address must be given to the court on or before the 7th day after the date the child or parent change residences.
1. Continuing obligation. The obligation continues until discharge and satisfaction of a judgment or other final disposition of the case.
 2. Notification to appellate court. The obligation extends through trial de novo, and the child and parent are required to notify the appellate court of a change of address.
- B. Offense. Failure timely to notify the court of a change of address by a child or parent is a Class C misdemeanor.
- C. Written notice required. Written notice to the child and parent of their obligation to provide the court, in writing, with the current address and residence of the child must be given. This requirement may be satisfied by:
- (i) The court giving the child and parent a written copy of the obligation during the initial appearance before the court;
 - (ii) A peace officer giving the child and parent a written copy of the obligation on release of a child to the child's parent, guardian, custodian, or other responsible adult, following arrest; or
 - (iii) A peace officer giving the child and parent a written copy of the obligation on issuing a citation to the child.
- D. Affirmative defense. It is an affirmative defense to prosecution for the failure to provide the court with the current address and residence of the child that the child and parent were not informed of this obligation.

TEX. CRIM. PROC. CODE §45.057.

8. Securing Appearance.

- A. Arrest. A child may be taken into custody pursuant to the laws of arrest.

TEX. FAM. CODE §52.01.

- B. Duties of peace officer. A peace officer taking a child into custody may:
- (i) Release the child to a parent, guardian, custodian, or other responsible adult upon that person's promise to bring the child to court;
 - (ii) Take the child before the justice court; or
 - (iii) Take the child only to a place of non-secure custody if the child is not released to a parent, guardian, custodian, or other responsible adult, or is not taken to the court. The child may not be detained for longer than 6 hours.

TEX. CRIM. PROC. CODE §45.058.

- C. Detention. A child taken into custody for an offense for which a justice court has jurisdiction may be presented to or detained in a detention facility only if:

- (i) The child's non-traffic case is transferred to the juvenile court because the justice court must waive, or chooses to waive, its original jurisdiction; or
- (ii) The child is referred to the juvenile court for contempt of court.

TEX. CRIM. PROC. CODE §45.058.

- D. Field release citation. A law enforcement officer may issue a field release citation in place of taking a child into custody for a traffic offense or an offense, other than public intoxication, punishable by fine only. The citation must contain written notice of the time and place the child must appear before a magistrate.

However, a law enforcement officer may not issue a citation or file a complaint for conduct by a child younger than 12 years of age that is alleged to have occurred on school property, including a vehicle.

TEX. CRIM. PROC. CODE §45.058.

- E. However, a warrant may not be issued for the arrest of a person for a Class C misdemeanor under the Education Code committed when the person was younger than 17 years of age.

TEX. EDUC. CODE §37.085

9. Summons for Parent.

- A. Other offenses committed by juveniles. A court having jurisdiction of offenses committed by juveniles shall issue a summons to the parent, managing conservator, or guardian of the individual charged with the offense.

- (i) The summons must contain an order directing the parent, managing conservator, or guardian to appear personally at the hearing with the child.
- (ii) The summons must also contain a warning that the failure of the parent, managing conservator, or guardian to appear may be punishable as a Class C misdemeanor.

- B. Failure of parent, managing conservator, or guardian to appear. A parent, managing conservator, or guardian who fails to appear at a hearing after receiving a summons commits a Class C misdemeanor.

TEX. CRIM. PROC. CODE §45.057

10. Plea by Juvenile.

The judge must take the plea in open court, of a defendant who has not had the disabilities of minority removed and is younger than 17 years of age, with the defendant's parent present.

"Electronic transmission of certain visual material depicting minor." The judge must take the plea in open court, of a defendant who has not had the disabilities of minority removed and is younger than 18 years of age, with the defendant's parent present, if the defendant is charged with "electronic transmission of certain visual material depicting minor."

11. Admonishment of Expunction Rights.

- A. Provisions requiring notice of right to expunction. The judge must inform the child and any parent, in open court, of the child's expunction rights if the child is convicted of not more than one offense punishable by fine only. This section applies to the offense of "electronic transmission of certain visual material depicting minor."

These expunction rights do not apply to the following offenses:

- Purchase of alcohol by a minor, TEX. ALC. BEV. CODE §106.02;
- Attempt to purchase alcohol by a minor, TEX. ALC. BEV. CODE §106.025;
- Consumption of alcohol by a minor, TEX. ALC. BEV. CODE §106.04;
- Driving under the influence of alcohol by a minor, TEX. ALC. BEV. CODE §106.041;
- Possession of alcohol by a minor, TEX. ALC. BEV. CODE §106.05;
- Misrepresentation of age by a minor, TEX. ALC. BEV. CODE §106.07;
- Possession, purchase, consumption, or receipt of cigarettes or tobacco products by minors, TEX. HEALTH & SAFETY CODE §161.252;
- Failure to attend school, TEX. EDUC. CODE §25.094.

- B. Copy of statute. The judge must provide a copy of TEX. CRIM. PROC. CODE §45.0216.
- C. Other applicability. If the court proceeds to suspend the sentence and defer disposition under TEX. CRIM. PROC. CODE §45.051, the record of a person under 17 years of age may be expunged under the provisions of TEX. CRIM. PROC. CODE §45.0216.

12. Disposition, in Particular.

- A. Judgment. On a plea of guilty or no contest, or on a finding of guilt, the judge will assess a fine and direct the satisfaction of the judgment. The judgment shall be that the defendant pay the amount of the fine and costs to the state.

At the time of conviction, the judge may allow a defendant who is a child to elect to discharge the fine and costs by (i) performing community service or attending a tutoring program, or (ii) paying the fine and costs when sentence is pronounced, paying the fine and costs at some later date, or paying a portion of the fine and costs at designated intervals.

The election by a defendant who is a child of the manner of discharging the fine and costs must be made in writing, and signed by the defendant and the defendant's parent, guardian, or managing conservator, if present. The written election is a court record which must be maintained by the court.

TEX. CRIM. PROC. CODE §45.054.

If the defendant was a child at the time the offense was committed and discharging the fine and costs in any manner would impose an undue hardship on the defendant, the court may waive payment of a fine or costs imposed on a defendant who defaults in payment.

TEX. CRIM. PROC. CODE §45.0491.

- ☐ Enter judgment for fine and court costs.
- ☐ Allow defendant to elect method of discharging judgment, and maintain written and signed copy of election.
- ☐ As elected, direct payment of judgment immediately, at a later date, or in installments, or direct discharge of judgment by performing no more than 200 hours of community service, or attending a tutoring program. A defendant attending a tutorial program is considered to have discharged not less than \$50 of fines or costs for each 8 hours of tutoring. The fine and costs may be waived for a defendant who is indigent and unable to perform community service work.

TEX. CRIM. PROC. CODE §45.041; TEX. CRIM. PROC. CODE §45.0491; and TEX. CRIM. PROC. CODE §45.0492.

- B. Proceedings concerning “electronic transmission of certain visual material depicting minor.” If the court finds that a defendant, 17 years of age, has committed the offense of “electronic transmission of certain visual material depicting minor” transmitted to another minor, the court may enter an order requiring the defendant to attend and successfully complete an education program on the dangers of students sharing visual material depicting minor engaged in sexual conduct under Sec. 37.218 of the Texas Education Code. The defendant or the defendant’s parent is required to pay the cost of attending such an educational program if the court determines that the defendant or the defendant’s parent is financially able to make the payment.

TEX. CRIM. PROC. CODE §45.061.

- C. Motion for New Trial and Appeal. A motion for a new trial must be made within 5 days after the rendition of judgment, and not afterwards.

TEX. CRIM. PROC. CODE §45.037.

The filing of an appeal bond perfects the appeal. The amount of a bail bond may not be less than two times the amount of the fine and costs adjudged against the defendant, payable to the State of Texas. The appeal bond is conditioned that the defendant make the defendant’s personal appearance before the county criminal courts at law and remain there from day to day to answer in the cause in that court.

TEX. CRIM. PROC. CODE §45.0425; TEX. CRIM. PROC. CODE §45.0426.

13. Expunction.

- A. Definition of “child.” For purposes of expunction of the records relating to juveniles convicted of other offenses committed by juveniles, a child is a person who is 10 years old or older and under 17 years old.

TEX. FAM. CODE §51.02.

A defendant who is 17 years old and convicted of the offense of “electronic transmission of certain visual material depicting minor” is entitled to have the records relating to the conviction expunged.

TEX. CRIM. PROC. CODE §45.0216.

- B. Procedure for expunction. Except for alcohol related offenses, tobacco related offenses, and failure to attend school, a person convicted of not more than one offense punishable by fine only, or convicted of a violation of a penal ordinance of a political subdivision, may, on or after the person's 17th birthday, apply to the court in which the person was convicted to have the conviction expunged. A \$30 fee is required on filing the application.

A person convicted only once of "electronic transmission of certain visual material depicting minor" may apply to have the conviction expunged. A \$30 fee is required on filing.

Records of a person under 17 years of age relating to a complaint dismissed under Article 45.051 (suspension of sentence and deferral of final disposition) or 45.052 (dismissal of misdemeanor charge on completion of teen court) of the Code of Criminal Procedure may be expunged. The Defendant may apply to the court in which the child was convicted to have the records expunged. A \$30 fee is required on filing.

- ❑ Applicant submits written request under oath, containing a statement that the person was not convicted while a child of any offense punishable by fine only or of any violation of a penal ordinance of a political subdivision, other than the offense the person seeks to have expunged.
- ❑ At the time of filing, applicant is required to pay a \$30 fee to defray the costs of notifying state agencies of the order of expunction.
- ❑ If the court finds that the applicant has not been convicted of more than one misdemeanor punishable by fine only other than public intoxication or violation of a penal ordinance of a political subdivision while the person was a child, the court orders the conviction, together with all complaints, verdicts, sentences, and prosecutorial and law enforcement records, and any other documents relating to the offense, expunged from the person's record.

Records of a person 17 years of age or older who successfully completes deferred disposition may be expunged under Chapter 55 of the Code of Criminal Procedure.

1. Alcohol related offenses. On reaching 21 years of age, a person who has no more than one conviction for any of following offenses:
 - Purchase of alcohol by a minor
 - Attempt to purchase alcohol by a minor
 - Consumption of alcohol by a minor
 - Driving under the influence of alcohol by a minor
 - Possession of alcohol by a minor,may apply to the court in which the person was convicted to have the conviction expunged. A fee of \$30 is due on filing the application.

TEX. ALC. BEV. CODE §106.12.

2. Tobacco related offenses. A person convicted of possession, purchase, consumption, or acceptance of a cigarette or tobacco product, or of falsely representing the person's age as 18 years of age or older by displaying false proof in order to obtain a cigarette or tobacco product, on satisfactory completion of the tobacco awareness program or tobacco related community service, may apply to the court to have the conviction expunged. A fee of \$30 is due on filing the application.

TEX. HEALTH & SAFETY CODE §161.255.

- C. Effect of expunction. After entry of an expunction order, the applicant is released from all disabilities resulting from the conviction, and the conviction may not be shown or made known for any purpose.

TEX. CRIM. PROC. CODE §45.0216.

14. Violation of Judgment and Additional Orders under Circumstances Constituting Contempt - Other Offenses Committed by Juveniles.

- A. Failure to pay fine or comply with additional orders. Either the defendant's failure to pay the fine and costs, or to discharge the fine and costs by performing community service, or the violation of orders imposed in connection with the judgment may be enforced by contempt or by a referral to the juvenile court for delinquent conduct.

If the individual fails to obey an order of the court, after notice and an opportunity to be heard, the court may:

- (1) Refer the individual to the juvenile court for delinquent conduct for violating a lawful order of the court, if the individual is under 17 years old; or
- (2) Retain jurisdiction, hold the child in contempt, and order either or both of the following:
 - (i) That the contemnor pay a fine not to exceed \$500; or
 - (ii) That the Department of Public Safety suspend the contemnor's driver's license or permit, or deny the issuance of a license or permit until the contemnor fully complies with the orders of the court.

TEX. CRIM. PROC. CODE §45.050.

- B. Suspension of sentence and deferral of disposition. The violation of an order suspending sentence and deferring disposition under TEX. CRIM. PROC. CODE §45.051 results in an adjudication. When the judgment is entered, the court may impose additional orders as authorized by TEX. CRIM. PROC. CODE §45.057.

- C. Judgment or judgment and additional orders under TEX. CRIM. PROC. CODE §45.057, "other offenses committed by juveniles."

1. Enforcement of Order by Contempt. If a defendant fails to satisfy the fine and costs as the court directed, either by payment of the fine and costs, or by performing community service to discharge the judgment, or if the court believes that an individual convicted of "failure to attend school" has violated an order that includes one or more of the requirements listed in TEX. CRIM. PROC. CODE §45.057, the court may proceed as authorized by TEX. CRIM. PROC. CODE §45.050, to:

- (i) Hold the child in contempt; or
 - (ii) If the individual is under 17 years of age, refer the individual to juvenile court for delinquent conduct.

2. Age of defendant. The court may hold the defendant in contempt:

- (i) if the defendant is under 17 years of age at the time the defendant failed to obey the court's order, or

- (ii) if the defendant failed to obey the court's order while younger than 17, but contempt proceedings could not be held before the defendant's 17th birthday; or
- (iii) if the defendant was convicted of "failure to attend school" before the defendant's 17th birthday, but was 17 years of age or older at the time of the contemptuous behavior.

TEX. CRIM. PROC. CODE §45.050.

D. Enforcement of Orders.

1. Contempt.

A. Specificity. The court's orders must be in writing, and state what is required of the defendant in clear and specific terms.

B. Notice and Hearing. Violation of the court's orders is classified as "constructive" or "indirect" contempt because the defendant's conduct occurs outside the presence of the court. Due process requires that the defendant who is to be held in constructive contempt must be given notification of the charges and an opportunity to defend against those charges.

- ☐ Prepare show cause order describing the acts alleged to have been committed by the defendant in violation of the court's order and setting a hearing date;
- ☐ Issue precept and personally serve defendant with the show cause order a reasonable time before the hearing;
- ☐ Issue a writ of attachment if the defendant fails to appear for the hearing; the court may not proceed with a show cause hearing in the absence of the defendant;
- ☐ Hold the hearing to determine whether the defendant did, in fact, violate the court's order in the particulars described by the show cause order.

2. Punishment. If the court finds that the defendant violated the court's order, the court may impose punishment of either or both (i) a fine not to exceed \$500, or (ii) suspension of or denial of the issuance of the defendant's driver's license or permit by the Department of Public Safety until the defendant fully complies with the orders of the court.

- ☐ If the court finds that the defendant violated the court's order, prepare a written order:
 - finding the defendant in contempt,
 - stating in what way the order was violated, and
 - reciting the defendant's punishment of either or both (i) a fine not to exceed \$500, or (ii) suspension of or denial of the issuance of the defendant's driver's license or permit by the Department of Public Safety until the defendant fully complies with the orders of the court.

E. Referral to Juvenile Court for delinquent conduct. In order to support the defendant's referral to the juvenile court for delinquent conduct, it is suggested that the procedural

requirements for contempt be followed in making a finding that the defendant has violated the court's order.

- ☐ Prepare show cause order describing the acts alleged to have been committed by the defendant in violation of the court's order;
- ☐ Issue precept and personally serve defendant with show cause order a reasonable time before the hearing;
- ☐ Issue writ of attachment if defendant fails to appear for hearing; the court may not proceed with a show cause hearing without the presence of the defendant;
- ☐ Hold a hearing to determine whether defendant did, in fact, violate the court's order in the particulars described by the show cause order;
- ☐ If the court finds that the defendant violated the court's order, prepare a written order stating in what way the court's order was violated and referring the defendant to the juvenile court.

TEX. CRIM. PROC. CODE §45.050.

15. Issuance of Capias Pro Fine to Satisfy the Judgment.

If the Defendant fails to satisfy the judgment for fine and costs as required by the court, the court may issue a capias pro fine ordering the arrest of the defendant to be brought before the court. A capias pro fine may issue only if:

- (i) The defendant is 17 years of age or older;
- (ii) The court finds that the issuance of the capias pro fine is justified considering (a) the defendant's sophistication and maturity, (b) the defendant's criminal record and history, and (c) the likelihood of securing the discharge of the judgment through the use of other procedures; and
- (iii) The court has proceeded under TEX. CRIM. PROC. CODE §45.050 to compel the defendant to discharge the judgment.

TEX. CRIM. PROC. CODE §45.045.

16. Unadjudicated Children Now Adults.

- A. Notice of continuing obligation to appear. If the court has used all available procedures to secure the defendant's appearance to answer charges filed against the defendant, but the defendant has failed to appear, on or after the defendant's 17th birthday, the court may issue a notice of continuing obligation to appear.
- B. Content of notice. The notice must order the defendant to appear at a designated time, place, and date to answer the charge. The notice must contain the following statement in boldfaced type or capital letters:

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

- C. Failure to Appear. Failure to appear as ordered by the Notice of Continuing Obligation is a Class C misdemeanor. It is an affirmative defense that the defendant did not receive the notice.
- D. Arrest. The defendant's failure to appear as required by the Notice of Continuing Obligation may result in the issuance of a warrant ordering the arrest of the defendant. Since "failure to appear in response to a Notice of Continuing Obligation" is an offense committed by the defendant, now an adult, the defendant may be taken into secured custody on arrest.

An individual may not be taken into secured custody for offense alleged to have occurred before the individual's 17th birthday.

TEX. CRIM. PROC. CODE §45.060.

17. Confidential Records Related to the Conviction of a Child.

All records and files relating to a child who is convicted of and has satisfied the judgment for, or who has received a dismissal after deferral of disposition for a fine-only misdemeanor offense, other than traffic, including those held by law enforcement, and information stored by electronic means or otherwise from which a record or file could be generated, are confidential and may not be disclosed to the public.⁵

All records and files relating to a child who is charged with, is convicted of, is found not guilty of, had a charge dismissed for, or is granted deferred disposition for a fine-only misdemeanor offense, other than traffic, including those held by law enforcement, and information stored by electronic means or otherwise from which a record or file could be generated, are confidential and may not be disclosed to the public.⁶

Information may be viewed by

- (1) judges or court staff;
- (2) a criminal justice agency for a criminal justice purpose, as those terms are defined by Section 411.082, Government Code;
- (3) the Department of Public Safety;
- (4) an attorney for a party to the proceeding;
- (5) the child defendant; or
- (6) the defendant's parent, guardian, or managing conservator

A "criminal justice agency" means:

- (A) a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice; or
- (B) a nongovernmental railroad or campus police department that has obtained an originating agency identifier from the Federal Bureau of Investigation.

TEX. CRIM. PROC. CODE §45.0217.

⁵ SB 393, 83rd Legislature. If amendments to the same statute are enacted at the same session of the legislature, one amendment without reference to another, the amendments shall be harmonized, if possible, so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment prevails. The date of enactment is the date on which the last legislative vote is taken on the bill enacting the statute. The Senate concurred in House amendments on May 23, 2013. This bill is effective on 9-1-2013.

⁶ HB 528, 83rd Legislature. HB 528 was passed by the Senate on May 22, 2013. This bill is effective on 1-1-2014.