

What is a Juvenile?

- Children and Minors
- "Child" and "Minor" used in codes to specify certain age groups
- They do NOT mean the same thing!
- We must look to various codes to gain an understanding of the terms and definitions

Children and Minors in the Code

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

What is a Judgment?

- Magical Piece of Paper
- Judgments (read Art. 45.041, C.C.P.)
 - "judgment" and "sentence" = fine and costs
 - Manner of payment (This is where you've got to be real careful)
 - Restitution (when applicable)
 - "Other sanction authorized by law (The expansion port)
 - Jail credit (More on this later)
 - Rendered in open court (Remember this is a public matter)

**ORDERS
OF
NONDISCLOSURE
Texas Government Code
Sec. 411.081(f1)**

411.081(f-1) to the Govt. Code

- Mandates that that criminal courts immediately issue a nondisclosure order on the conviction of a child for a misdemeanor offense punishable by fine only
- Only pertains to conviction of "child" under §51.02, FC
 - At least 10, younger than 17
 - It won't apply to alcohol status offenses committed by 17-20 year olds
- Effective Date: June 19, 2009

No Order of Nondisclosure

A justice or municipal court should **NOT** enter an Order of Nondisclosure when:

- When a child has been placed on or has successfully completed a form of probation
- Probation: Deferred, Teen Court, DSC
- WHY?
- No Conviction!

Action Required By The Court

- Upon conviction of a child not engaged in conduct indicating a need for supervision, the Court should:
 - Immediately issue a **WRITTEN ORDER of Nondisclosure;**
 - The Order should prohibit the disclosure of criminal history record information to the public
 - WITHIN FIFTEEN (15) BUSINESS DAYS**, the Order, containing case specific information **MUST** be sent to the Texas Department of Public Safety

Order Containing Nondisclosure Information Must be Sent to DPS

- Written Order of Nondisclosure must be sent within 15 business days
- Order sent to Texas Department of Public Safety.
- Per DPS, a copy of the nondisclosure order should be sent either by facsimile or electronic mail to:
 - Facsimile: 512.424.5760
 - E-mail to: NonDisclosures@txdps.state.tx.us

Nondisclosure – Not Information Obliteration

- An order of Nondisclosure simply means that the information cannot be released or transmitted to anyone other than those agencies specifically provided by statute.

Who has access?

- A criminal justice agency may disclose criminal history record information that is the subject of the order only to:
 - other criminal justice agencies for criminal justice purposes,
 - an agency or entity listed in Subsection (j), or
 - the person who is the subject of the order.
- The Defendant or parents **CANNOT AUTHORIZE** the release of information.

Who does not have access?

- **Everyone Else!**
- **Who did you not see on the list?**
 - **Mom**
 - **Dad**
 - **Military recruiters**

Correct Answer to Requests

- Responses to requests must not be confirmations in themselves.
- Perhaps the best response:

“We do not have records responsive to your request.”

Alcohol Awareness Program

- Required on conviction or as a condition of deferred under 106.115 for the following offenses:
 - 106.02: Purchase of Alcohol by a Minor
 - 106.025: Attempt to Purchase Alcohol by a Minor
 - 106.04: Consumption of Alcohol by a Minor
 - 106.041: Driving (or Boating) Under the Influence
 - 106.05: Possession of Alcohol by a Minor
 - 106.07: Misrepresentation of Age by a Minor
 - 49.02 PC Public Intoxication

Alcohol Awareness Program

- If completed
 - Court may reduce fine to half the amount assessed
- Failure to complete
 - Court can give another 90 days
 - Court must order DPS to suspend or deny issuance of DL for up to 6 months (1st) or 1 year (2nd)
- Must be approved by the Texas Commission on Alcohol and Drug Abuse (TCADA)
 - Information about programs can be found at www.dshs.state.tx.us/offendered
 - No known, TCADA approved online courses

Alcohol-Related Community Service

- Must be related to education about or prevention of misuse of alcohol if programs are available in the community (106.071, 106.041)
- If programs are not available in the community, court may order community service that it considers appropriate for rehabilitative purposes (106.071)

Driver License Suspension

- The court shall order DPS to suspend a license or permit (or deny issuance)
 - 30 days, first offense
 - 60 days, second offense
 - 180 days, third offense
- Use DIC-15 form

Tobacco Awareness Program (161.253)

- Required
- Parent may be required as well
- On request, it may be taught in another language
- If the defendant resides in a rural area of the state or where TAP is not available, court SHALL require 8-12 hrs of tobacco-related community service
- Remedial, not punishment
- Not later than 90th day, defendant presents proof

Driver's License Suspension or Denial

- If Defendant fails to complete Tobacco Awareness Course or Tobacco-related Community Service, then
 - Court shall order DPS
 - Suspend or deny DL or permit
 - Order must specify the period of suspension
 - Not to exceed 180 days
 - DPS sends Defendant notice of suspension by first class mail

Indigence: What is It?

- **Dictionaries:**
 - **Poverty; neediness**
 - **the condition of being extremely poor**
 - **a state of extreme poverty or destitution**
 - **Lacking necessities of life, such as food, clothing, etc.; impoverished (indigent)**
 - **A person who is extremely poor (indigent)**
- **Too poor to pay!**

When should it be Considered?

- **When determining whether Defendant has "Insufficient Resources" and will be Discharging Fines/Cost via Community Service (Art. 45.049, CCP)**

Indigency Issues: When should it be Considered?

- **Art. 45.049 Community Service in Satisfaction of Fine or Costs**
 - **Defendant must fail to pay a previously assessed fine or costs OR**
 - **Determined by the court to have insufficient resources**
 - **May discharge all or part of amount**

Community Service Comes in THREE Flavors

- 1. As a Mandatory Remedial Measure (status offenses involving juveniles: MIP, DUI, MIC, Tobacco, etc.)**
- 2. As a reasonable condition of Deferred Disposition (Art. 45.051(b)(10) CCP)**
- 3. As a Means for an Indigent Person to Discharge fine and Costs (Note: Must be Indigent. Community Service is as good as \$\$\$)**

Key Statutes: Community Service and the Indigent

Article 45.049 C.C.P., Community Service to in satisfaction of fine or costs:

- "insufficient resources or income to pay fine and costs"
- "discharge all or part of fine and costs"
- "must specify the number of hours the defendant is required to work"

"only for a governmental entity or nonprofit org. that provides services to the general public that enhances social welfare and the general well being of the community"

- agreement to supervise and report on the defendant's work
- generally not more than 16 hours per week
- not less than \$50 per 8 hours of community service

But What if the Defendant is Unable to Perform Community Service?

45.091 Waiver of Payment of Fines and Costs

- For Indigent Defendants
- Judge may waive payment on defaulting defendant on finding:
- Defendant is indigent; and
- Discharging judgment via Community Service will impose undue hardship.

Juvenile Contempt

- If a child fails to obey an order of the court under circumstances that would constitute contempt of court,
- Then court may use Juvenile contempt procedure

Juvenile Contempt: 45.050 CCP

- Court must provide notice of and conduct hearing before it may
 - Refer child to juvenile court for delinquent conduct, OR
 - Retain jurisdiction and hold child/person in contempt
 - \$500 max fine and/or
 - DL suspension until full compliance (court shall notify DPS on proof of compliance)

Juvenile Contempt: 45.050 CCP

- Can be used to hold a person (older than 17) in contempt if:
 - Person was convicted for offense committed before 17
 - Person failed to obey an order
 - Failure to obey occurred under circumstances that would constitute contempt of court
- Cannot refer to Juvenile court if violation of court order occurs at 17 or older

JNA/Capias Pro Fine

- Written Final Judgment
- Child Violates Written Judgment
- Court attempts to compel discharge through Juvenile contempt
- Child Turns 17

**Juvenile Now Adult: Capias Pro Fine
45.045 CCP**

- Before capias pro fine is issued, court must determine
 - Person is 17
 - Issuance is justified (criteria under 45.045(b)(2)
 - Sophistication and maturity
 - Criminal record and history of individual
 - Likelihood of bringing about discharge by other procedures
- Court has proceeded under 45.050 contempt

**Offenses Committed by Juveniles
45.057 CCP**

- On a finding by a municipal court that a child committed an offense that the court has jurisdiction of , the court has jurisdiction to enter an order:
 - Referring child or parent for child welfare services
 - Requiring child to attend a special program in the best interest of the child
 - Requiring parent to do any act or refrain from any act that will increase the likelihood of compliance

Expunctions

- **General: Children Convicted or Dismissed after Deferred Disposition of "Fine Only Offenses"**
– CCP Article 45.0216
- **Failure to Attend School**
– CCP Article 45.055
- **Offenses Involving Minors and Alcohol**
– ABC Section 106.12
- **Tobacco Cases**
- **Health & Safety Code Section 161.255**

Expunctions

- **All expunctions under TCCP 45.0216, TCPP 45.055, TABC 106.12 and H.S.C. 161.255 are:**
 - Available to status offenders (age related offenses)
 - Available when the person has been convicted.
 - Apply only to Class "c" fine only offenses

**General Expunction Statute
CCP Article 45.0216**

- Available for a person who is a "child" as defined under Sec. 51.02 of the Texas Family Code. (Under 17 years of age)
- Available after the Defendant attains seventeen (17) years of age
- Permits expunction after Deferred Disposition under T.C.C.P. 45.051 or Teen Court under 45.052
- Applies to a person convicted of not more than one offense described by Section 8.07(a)(4) or (5)

LIMITED APPLICATION

- Applies only to Fine Only Offenses and City Ordinances (includes public intoxication)
- Art. 45.0216 expunction does NOT apply to:
 - Chapter 106, Minor Alcoholic and Beverage Code Offenses
 - Chapter 161, Health and Safety Code Minor Tobacco Offenses
 - Section 25.094, Education Code Failure To Attend School Offenses

Mandatory Defendant Notification

- Under TCCP 45.0216, the Court (Judge) MUST:
 - inform the person and any parent in open court of the person's expunction rights; AND
 - provide them with a copy of T.C.C.P. Art. 45.0216.

Failure to Attend School Expunction, CCP Article 45.055

- Applies only to "Failure to Attend School" offenses filed under the Education Code.
- Available after the Defendant attains eighteen (18) years of age
- May be expunged without hearing
- Only on finding that defendant had not been convicted of another offense under this code prior to reaching age of 18.
- Not available after deferred disposition

FTAS Exp: Mandatory Notification

- Under TCCP 45.054 (FTA School), the Court (Judge) **MUST:**
 - **inform the person and any parent in open court of the person's expunction rights; AND**
 - **provide them with a copy of T.C.C.P. Art. 45.055.**

Alcohol Expunction, ABC Sec. 106.12

- Applies only to offenses under the Alcoholic Beverage Code.
- Available after the Defendant attains twenty-one (21) years of age
- Only on finding that defendant had not been convicted of another offense under this code prior to reaching age of 21.
- Not available after deferred disposition
- No mandatory notification

Tobacco Expunction, HSC Sec.161.255

- Applies only to tobacco offenses under the Health and Safety Code.
- Available if the defendant successfully completes an approved "Tobacco Awareness Course" – regardless of age
- Request may be made unlimited times
- Not available after deferred disposition
- Court need NOT inform defendant of expunction right

**Municipal Court
Expunction Procedures**

- Person must make written request (motion)
- Request must be made after date of majority for purpose of offense or code
- Requests must be verified motion (sworn)
- Other than Tobacco Offenses, Defendant must make oath that they have not, while under appropriate age, been convicted of any other offenses other than the one they are seeking to have expunged

Order and Notification

- Person making request must pay \$30 fee to defray costs of notifying other agencies at time of request.
- Judge must sign written Order of Expunction
- Order must require that 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.

Clerk Must Disseminate Order

- It is the duty of the Court – through the Court Clerk – to disseminate the Order to all courts, agencies or entities that might have any information related to the case subject to the expunction order
- The order must be sent to police agencies that may have arrest/ detention/ warrant information as well as courts and prosecutors
