

# Municipal Court Recorder

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## UNAUTHORIZED PRACTICE OF LAW AND PRO SE PRACTICE

by James D. Blume  
Member and Immediate Past Chair  
Unauthorized Practice of Law  
Committee of the  
Supreme Court of Texas

### I. The Unauthorized Practice of Law is a growing problem.

The unauthorized practice of law [UPL] comes in three distinct varieties:

A. *Unlicensed persons pretending to be attorneys.*

This is the phenomenon that most people think of when people think of UPL. These are persons who say they are attorneys but are not. They may have cards saying they are attorneys and resumes with a fictitious background. This form of fraud is most commonly seen in the realm of personal injury practice.

B. *Persons who believe they have the right to practice law but are not lawyers.*

This group of people will immediately state they are not attorneys and, in fact, would not be an attorney under any circumstances. They go by a variety of titles, such as "independent paralegals"; "public adjusters"; or

"immigration consultants." After disclaiming they are attorneys, they will immediately proceed to inform their "clients" of their legal rights. Unfortunately, this group, as a whole, is very ill-informed and often give advice that, if given by an attorney, would be malpractice.

C. *Out of state lawyers.*

It has become more common for attorneys from other states who move to Texas to not obtain a Texas law license. A lawyer who resides in Texas must be licensed if they practice in Texas. Some out of state lawyers fail to follow *pro hac vice* rules or abuse them. This is discussed further in Section V, *infra*.

*Pro Se continued on page 4*

## CUSTODY OF JUVENILES AND TAKING STATEMENTS

by Honorable B.K. (Pete) Menefee,  
Municipal Judge,  
City of Jacksonville

As a municipal court judge and magistrate, it is important to understand the rules regarding juvenile custody, magistration and the taking of a statement from a juvenile. The statutes regarding these issues are sections 51.095, 52.02 and 52.025 of the Family Code. These statutes are

discussed in the case of *John Baptist Vie Le v. The State of Texas*, 993 S.W.2d 650 (Tex. Crim. App. 1999)

Section 51.095, F.C. provides procedures for taking a juvenile's statement so that it is admissible in future proceedings. Before giving a statement, a magistrate must warn the juvenile of his or her rights and certify that the juvenile knowingly understands the rights and knowingly waives the right to remain silent. The statute also provides where a statement can be made and includes a detention facility, custody of an officer, or during or after the interrogation of a child by an officer if the child is in the possession of the Department of Protective and Regulatory Services and is suspected to have engaged in the conduct that violates a penal law of this state.

*Juvenile continued on page 7*

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# AROUND THE STATE

## TMCA ELECTION

At the Annual Meeting of the Texas  
Municipal Courts Association on June  
17, 2000, President Edwin L. Presley  
(Benbrook) announced the election  
results and new officers and directors  
for 2000-2001.

President-Elect: Judge Robert Kubena  
(Hallettsville)

Region VI Director: Judge Dan Francis  
(Robinson)

Region X Director: Barbara Sudhoff,  
Court Manager (Corpus Christi)

The counties located in each region  
may be found on the TMCA web site  
at [www.txmca.com](http://www.txmca.com).

## TMCA AWARDS

Each year, the Texas Municipal Courts  
Association (TMCA) sends all Associa-  
tion members (judges, court clerks,  
court administrators, and prosecutors)  
an invitation to nominate a person for  
consideration as either "Judge of the  
Year" or "Clerk (or Administrator) of  
the Year". The nominations are  
evaluated and verified by the Awards  
Committee which is comprised of both  
judges and clerk/court administrators.

The person selected for either award  
generally has been in service to the  
municipal courts for a number of years  
and must have a spotless record of  
service demonstrating by knowledge,  
education and example the highest  
standards of their profession. The

previous recipients have represented a  
wide range of courts—from some of  
the state's largest municipal courts to  
some of the smallest. All recipients  
have a common thread in that they are  
highly respected by their peers and  
colleagues.

At the TMCA Annual Meeting in  
Austin on June 16, the 2000 award  
winners were announced. The Out-  
standing Judge of the Year is Judge  
John Roberts from the City of Waco  
and the Outstanding Clerk of the Year  
is Leisa Hardin from the City of  
Crowley.

Judge John Roberts has served as the  
Municipal Court Judge for Waco for  
over 10 years. Prior to his judicial  
appointment, he was an Assistant  
District Attorney for McLennan  
County. He is a member of the State  
Bar of Texas, the McLennan County  
Bar Association, and has been a  
member of the Texas Municipal Courts  
Association (TMCA) for many years.

He received his BBA from North Texas  
State University in Denton and earned  
his law degree from the University of  
Texas in Austin.

Judge Roberts served two terms as the  
Region VI Director on the TMCA  
Board of Directors (1994-1998). He  
served with distinction on several  
TMCA and TMCEC committees and  
boards. John Roberts is highly  
regarded by those that know him and  
have worked with him.

"Judge Roberts has earned the reputa-  
tion as a knowledgeable, hard working,  
and innovative judge who presides over  
a court which provides a fair and  
impartial administration of justice.  
His service on both the TMCA and  
the Texas Municipal Courts Education  
Center Board of Directors and other  
committees has been beneficial to all  
the municipal courts for his work to  
promote programs and academic

---

curriculum to improve the administration of justice in the municipal court system." (Comments by TMCA President Ed Presley at the Awards Banquet.)

The recipient of the Clerk of the Year Award is Leisa Hardin. Ms. Hardin has been with the Crowley Municipal Court for 18 years.

At the Awards banquet, Judge Presley in making the presentation commented: "Leisa is a true professional in that she not only achieved proficiency in her position of municipal court clerk, she works hard to maintain and improve that proficiency." In addition to her participation in several update seminars each year, Ms. Hardin has completed training in such specialty courses as *Customer Service Techniques* and *Time Management* and participates in the TCCA/TMCA certification program.

Ms. Hardin has been a member of TMCA for the past 16 years. She has frequently been a faculty member in the clerks programs for TMCEC and receives very high ratings from the participants. She currently serves as a member of the TMCEC Education Committee which sets the guidelines for the academic curriculum for the TMCEC seminars.

In addition to her TMCA contributions, Ms. Hardin is also very active in the Texas Court Clerks Association. She has held numerous offices and currently is the Vice President and Education Committee Chair. She recently served as the President of the North Texas Chapter of TCCA. Ms. Hardin was instrumental in the development of the Clerk's Certification Program. She teaches many of the study sessions for the Level 1 Certification and is chair of the TCCA Education Committee that oversees the certification program.

## TEEN COURT ANNUAL CONFERENCE

This year's Teen Court Association's (TTCA) Annual Conference will be held in Midland, November 7-10, 2000 at the Midland Hilton and Towers. Pre-conference meetings and activities will begin Tuesday afternoon, November 7, with the actual conference beginning Wednesday morning and concluding at 11:30 a.m. on Friday. Excellent speakers, educational sessions and fun events are planned, including lunch and a special dinner on Wednesday, lunch and the awards banquet on Thursday evening, and breakfast on Friday. The cost to attend for TTCA members is \$150 if registering by August 30, 2000, and \$174 if registering after that date. The cost to non-members is \$200 if registering by August 30, and \$225 if registering after that date.

To make your hotel reservations, call the Midland Hilton and Towers at 915/683-6131 or 800/722-6131 Monday through Friday between the hours of 8 a.m. and 6 p.m. When calling, refer to the group name Texas Teen Court Association. The hotel is offering a special rate of \$57 per night. The Midland International Airport is served by American Eagle, Continental Airlines and Southwest Airlines. The Hilton provides complimentary parking and transportation to and from the Midland airport.

For more information regarding the conference, contact Mary Beck, Executive Director, Midland Teen Court at 915/689-1065, fax at 915/689-1087, or email Ms. Beck at [TEENCOURT@prodigy.net](mailto:TEENCOURT@prodigy.net).

## COURT 2000: THE BEGINNING OF GREAT ACHIEVEMENTS

The 2000 Texas Court Clerks Association Annual Conference will be held in Richardson, October 1-4, 2000 at the Omni Richardson Hotel. The registration fee is \$125. This year's conference will focus on court management and court clerk issues. Topics planned for the conference include *Court Policy and Procedures*, *Juvenile Law*, *Customer Service*, *Technology*, *Courts of Record*, *Chapter 45 Changes*, *Open Records*, and *Spanish for Court Clerks*. Numerous vendors will offer exhibits. Study sessions and exams for the clerk's certification program will also be offered. Many events will be planned, including a spouse/guest program, golf, shopping, a President's reception, a barbecue dinner and dance at the Bill Bates Cowboy Ranch, and the annual banquet and awards ceremony with entertainment presented by Keith and Margo's Murder Mysteries of Texas.

To make hotel reservations, contact the Omni Richardson Hotel at 972/231-9600. Mention that you will be attending the TCCA conference to receive the special \$95 per night rate. Reservations must be made by September 8, 2000. Rooms are limited, so register early. For more information on the TCCA Annual Conference, contact Kimberly D. Kierce at the Richardson Municipal Court, telephone 972/744-4502.



# THE 17th NATIONAL COLLEGE ON JUDICIAL CONDUCT AND ETHICS

The 17th National College on Judicial Conduct and Ethics will be held October 26-28, 2000 in Chicago, Illinois at the Wyndham Chicago. The College, sponsored by the American Judicature Society's Center for Judicial Conduct Organizations, provides a forum for members and staff of judicial conduct commissions, judges, judicial educators, and others interested in judicial ethics to exchange experiences and discuss solutions to their common problems.

In six one-and-a-half hour sessions on Friday and on Saturday morning, 12 topics will be addressed in concurrent workshops directed by a faculty of experts. Topics include: *The Appearance of Impropriety, Bifurcated Judicial Discipline Systems, Conditions as Part of a Sanction, Confidentiality, Current Issues in Community Activities, Disqualification, Issues for New Commission Members, Judicial Campaign Oversight, Judicial Ethics Advisory Opinion Procedures, Judicial Independence and Judicial Discipline, The Role of Public Members, and Sanctions.*

The \$250 registration fee includes one set of conference resource materials, the reception (with a cash bar) on Thursday, Friday luncheon, and two continental breakfasts. A confirmation will be sent to registrants, and a certificate of attendance will be provided at the College.

The Wyndham Chicago has reserved a block of rooms for College participants at \$169 a night, plus 14.9% occupancy tax. Reservations at the hotel must be made by September 25, 2000.

If you have any questions, contact Clara Wells at 312/558-6900 ext. 103 or cwells@ajs.org.

## Pro Se continued from page 1

Until recently there was a serious problem with software publishers selling legal forms with advice on completing them. After the publisher of *Quicken Family Lawyer* was restrained in a Federal suit from selling it in Texas as a violation of the UPL statute, this decision was overturned by the Legislature when it enacted subsection (c) to TEX. GOV'T CODE ANN. §81.101. The only consumer warning is that it must be disclosed that the forms were not written by a Texas lawyer. As a result, any standard forms contained in such computer programs are now a deceptive trade practice issue, as opposed to a UPL issue.

## II. The Unauthorized Practice of Law is Illegal.

The current laws governing the practice of law are primarily contained in TEX. GOV'T CODE ANN. §§81.101, *et seq.*, and 83.001, *et seq.* [All citations are to the Texas Government Code except as noted.] There are exceptions for out of state attorneys and law students under rules promulgated by the Supreme Court. §81.102(b). UPL is criminal in connection with personal injury practice. If a person commits UPL for profit in the area of personal injury practice, it is a criminal violation. Tex. Pen. Code Ann. §38.123. It is also criminal to hold oneself out as an attorney for financial gain for purpose of securing employment in a personal injury case. TEX. PEN. CODE ANN. §38.122.

## III. UPL Enforcement Mechanisms.

The Texas Supreme Court has authority over UPL. In addition to its statutory authority over UPL conferred by §81.101, *et seq.*, there is the court's own inherent authority over the practice of law. *UPLC v. Cortez*, 692 S.W.2d 47 (Tex. 1985) *cert. denied*, 474 U.S. 980 (1985).

The enforcement of the UPL statutes is delegated to the Unauthorized Practice of Law Committee [UPLC] which is a committee of the Texas Supreme Court, not the State Bar. The UPLC was created in 1979 by what is now §81.103. There are nine members - six attorneys and three public members, appointed by the Supreme Court for a three-year term. The chair is appointed each year for a one-year term. §81.103. The UPLC was described in the original section as a committee for the State Bar, but this language was deleted in 1991 making the UPLC an arm of the Texas Supreme Court.

The UPLC has five regions and various subcommittees in most State Bar districts. The UPLC replaced a patchwork system of enforcement by local bar associations or grievance committees. However, local bar committees for UPL are explicitly permitted to continue. §81.105. Most local bars have merged their UPL committees into the UPL subcommittee for that State Bar district. The funding for the UPLC comes from the budget of the State Bar's General Counsel's Office which is in turn funded by State Bar dues. No tax money is used.

The duties of the UPLC are in §81.104, and can be summarized as follows:

1. Investigate UPLC complaints; (the UPLC has subpoena power).
2. Prosecute civil actions in its own name to stop UPL.
3. The UPLC may *not* give advisory

opinions by Supreme Court rule.

The principal remedy is a civil suit, requesting a permanent injunction. An injunction can be enforced by civil contempt for violations. No suit can be initiated without the consent of the UPLC. If a suit is authorized, it is pursued to judgment or settlement. No settlement can be made which authorizes a respondent to violate the laws against UPL.

#### IV. The Practice of Law Defined.

The statutory definition of the practice of law is contained in §81.101. In subsection (a) there is a “laundry list” of acts which constitute the practice of law. The list includes preparing contracts and wills, as well as representing a client in court. There is a catchall provision stating that the practice of law includes anything requiring “legal skill or knowledge.” In subsection (b) courts are given the explicit ability to interpret subsection (a). Chapter 83 of the Tex. Gov’t Code Ann. contains a series of provisions making the preparation of instruments affecting the title to real property the unauthorized practice of law.

Over the years the UPLC has discovered a number of areas of concern:

##### 1. Insurance.

*Quarles v. State Bar*, 316 S.W.2d 797 (Tex. Civ. App.—Houston [1st Dist.] 1958, no writ). The representation of non-lawyer on an insurance matter is UPL.

*Brown v. UPLC*, 742 S.W.2d 34 (Tex. App.—Dallas 1987, writ denied). Advising persons on insurance claims is UPL. Appellant Brown was pro se.

*Green v. State Bar*, 27 F.2d 1083 (5th Cir. 1994). This case follows the *Brown* case, and holds that UPL regulation does not violate antitrust laws and UPLC prosecutors have absolute immunity from claims under 42 U.S.C. §1983.

##### 2. Immigration.

*UPLC v. Cortez*, 692 S.W.2d 47 (Tex. 1985) cert. denied, 474 U.S. 980 (1985). The selection and filling out of INS forms is UPL.

##### 3. Document preparation.

###### a. Realty instruments.

*Hexter Title & Abstract Co. v. Grievance Comm.*, 179 S.W.2d 946 (Tex. 1944). TEX. GOV’T CODE ANN. §83. 001, et seq.

###### b. Wills.

*Palmer v. Unauthorized Practice Comm., State Bar*, 438 S.W.2d 372 (Tex. Civ. App.—Houston [14th Dist.] 1969, no writ).

*Fadia v. UPLC*, 830 S.W.2d 162 (Tex. App.—Dallas 1992, writ denied). The selling of will kits which had not been prepared by an attorney was UPL. Appellant Fadia was pro se.

###### c. Forms.

*Cortez v. UPLC*, supra.

Texas law governing UPL does not cover Federal courts and agencies. Generally, Federal courts and agencies license persons who may appear before them. This regulation cannot be interfered with by the state. *Sperry v. Florida ex rel. the Florida Bar*, 373 U.S. 379, 83 S.Ct. 1322 (1963). Similarly, UPL law does not apply to incarcerated persons. *Johnson v. Avery*, 393 U.S. 483, 89 S.Ct. 747, 21 L.Ed.2d 718 (1968). Inmates may assist other inmates on legal issues if there is no effective assistance of counsel available. The U.S. Court of Appeals for the Fifth Circuit has narrowly construed this exception.

#### V. Duties of Courts.

There are a number of court administration issues. It is often the case that court clerks are quizzed by pro se litigants for legal advice. Clerks often have a difficult time trying, on one hand, to be courteous and helpful,

while avoiding practicing law on the other. The short guidelines are:

1. Advising persons of the rules or statutory information is not UPL.
2. Advising persons of a specific course of action (“if I were you...”) is UPL.
3. If “how do I do” questions can be answered by reference to the rules or statutory requirements, it is not UPL.
4. Assisting a person to fill out a form is UPL.

A court has the responsibility and the duty to determine credentials of persons appearing before it. *Bordon v. Wallace*, 570 S.W.2d 445 (Tex. Civ. App.—El Paso 1978, writ dismissed). A court also has the duty to monitor *pro hac vice* practice and require its compliance. Admission to the Bar, *pro hac vice*, is governed by Rule XIX of the *Rules Governing Admission to the Bar*. *Pro hac vice* admission can only be properly sought by a non-resident attorney for a particular proceeding. The applicant must be sponsored by a Texas attorney. A copy of this rule can be found in *West’s Texas Rules of Court - State*.

## MUNICIPAL COURTS

- Parents cannot represent their children unless they are attorneys licensed in Texas
- Law enforcement officers cannot represent the state. A prosecutor is needed.
- Clerks cannot give out legal advice.

What is a pro se party? The phrase “pro se” is Latin and means “for himself.” Some persons may use “pro per”, which is short for “in propria persona,” meaning “in one’s own proper person.” Some persons use “sui juris”, which means not under any legal disability. This term is not appropriate since all it asserts is that the person is not a child or a mentally incompetent.

Civil rules permit pro se representation. TEX. R. CIV. P. 7. A court may not order a party to be represented by counsel. *Ayres v. Canales*, 790 S.W.2d 554 (Tex. 1990); *Ex Parte Shaffer*, 649 S.W.2d 300 (Tex. 1983). Rule 7 also is expressly worded in the alternative - a party must either be pro se or have counsel, but not both. The criminal case law on “hybrid” representation is instructive.

The Federal rules on pro se representation are in 28 U.S.C. §1654 and FED. R. CIV. P. 4(a), 11. These civil rules only apply to natural persons. A pro se party is required to observe all applicable rules as would a party represented by counsel. *Bailey v. Rogers*, 631 S.W.2d 784 (Tex. App.—Austin 1982, no writ).

The criminal rules on pro se representation are different. Pro se representation is permitted by the Sixth Amendment to the U.S. Constitution. *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525 (1975) holds that the Sixth Amendment both requires that counsel be provided in criminal prosecutions and that a defendant has the right to waive assistance of counsel and have self-representation. The right of self-representation is also provided for in 28 U.S.C. §1654 and FED. R. CRIM. P. 44.

TEX. CODE CRIM. PROC. ANN. art. 1.051(f) and (g) permits the written waiver of the right to counsel. The requirement for a written waiver was declared to not be essential in *Burgess*

*v. State*, 816 S.W.2d 424, (Tex. Crim. App. 1991) (en banc). “Hybrid” representation [where a party wants to participate in a trial along with his attorney] is not a right. *Phillips v. State*, 604 S.W.2d 904, 907 (Tex. Crim. App. [Panel Op.] 1979); *Garza v. State*, 635 S.W.2d 644 (Tex. App.—Amarillo 1982, pet. ref’d).

The law on habeas corpus, TEX. CODE CRIM. PROC. ANN. art. 11.12, provides that any person may present a petition for a writ of habeas corpus on behalf of anyone else. This provision has been consistently interpreted by the UPLC to mean that while anyone can be the applicant, if the applicant is not an attorney, the applicant must have counsel. Since the applicant is not the real party interest, the rules relating to pro se practice do not apply.

Persons who are representatives, and thus not the real party in interest, cannot be pro se unless they are also an attorney. Examples include attorneys in fact (persons acting on a power of attorney), next friends, receivers, trustees, and executors or administrators of probate estates.

Artificial persons cannot be pro se.

#### 1. Corporations.

The oldest U.S. case on this issue is *Osborn v. United States Bank*, 22 U.S. (9 Wheat. ) 738, 830, 6 L.Ed. 204 (1824), in which Chief Justice Marshall wrote: “[a] corporation. . . can appear only by attorney, while a natural person may appear for himself.” *Globe Leasing, Inc. v. Engine Supply and Mach. Serv.*, 437 S.W.2d 43 (Tex. Civ. App.—Houston [1st Dist.] 1969, no writ) holds that Rule 7 only applies to natural persons. *American Express Co. v. Montfort Food Distributing Co.*, 545 S.W.2d 49 (Tex. Civ. App.—Houston [14th Dist.] 1976, no writ) holds that a corporation answers pro se at its peril.

#### 2. Partnerships, including limited

partnerships.

There are a number of exceptions to the general rule that artificial persons cannot be pro se.

#### a. Small claims court.

TEX. R. CIV. P. 747a, TEX. PROP. CODE ANN. §24. 009.” Authorized agents” may represent corporations in small claims court.

#### b. Garnishment.

*Gerhard Hardware Co. v. Texas Cotton-Press Co.*, 26 S.W. 168 (Tex. Civ. App.—Dallas 1894, no writ). A corporate officer could answer a garnishment.

#### c. Bankruptcy Code §341 hearings.

Under Federal law the initial meeting of creditors, governed by §341 of the Bankruptcy Code, are administrative hearings and not legal proceedings. Accordingly a non-attorney may appear for the corporation at these proceedings. *State Unauthorized Practice of Law Comm. v. Paul Mason & Associates, Inc.*, 46 F.3d 469 (5th Cir. 1995).

#### d. Non-attorney may perfect appeal.

*Kunstoplast of America, Inc. v. Formosa Plastics Corp., USA*, 937 S.W.2d 455 (Tex. 1997). The Supreme Court, while approving the general rule that a corporation must be represented by a licensed attorney, holds that a non-attorney may perform the ministerial duty of filing an appeal bond.

A final thought on pro se practice is that, while it may be legal, it is rarely a good idea. The old joke about “an attorney who represents himself has a fool for a client” is still true.

*James D. Blume is a Dallas attorney who serves as the Presiding Judge in the Wiley Municipal Court.*

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Juvenile continued from page 1

Section 52.025, F.C. provides for the designation of a juvenile processing office. It provides in relevant part, as follows:

(a) *The juvenile court may designate an office or a room, which may be located at a police facility or sheriff's offices, as the juvenile processing office for the temporary detention of a child taken into custody....*

(b) *A child may be detained in a juvenile processing office only for:*

(1) *the return of the child to the custody of a [parent]...;*

(2) *the completion of essential forms and the records required by the juvenile court or this title;*

(3) *the photographing and fingerprinting of the child...;*

(4) *the issuance of warnings to the child as required or permitted by this title; or*

(5) *the receipt of a statement by the child under section 51.09(b) of this code.*

Section 52.02, F.C. provides options where a peace officer may take a child when taking a child into custody. Subsection (a) sets forth the options and provides that a person who takes a child into custody shall, "without unnecessary delay and without first taking the child to any place other than a juvenile processing office designated under section 52.025, of this code," do one of the following:

1. release the child to a parent, guardian, custodian of the child, or other responsible adult upon that person's promise to bring the child before the juvenile court as required by the court;

2. bring the child before the office or official designated by the juvenile

court if there is probable cause to believe that the child engaged in delinquent conduct or conduct indicating a need for supervision;

3. bring the child to a detention facility designated by the juvenile court;

4. bring the child to a secure detention facility as provided by section 51.12(j);

5. bring the child to a medical facility if the child is believed to suffer from a serious physical condition or illness that requires prompt treatment; or

6. dispose of the case under section 52.03.

Next, lets look at the facts of *Baptist Vie Le v. State*. The victim, Babykutty John, was shot to death when he answered a knock at this front door. The police investigation led to Le, a juvenile, as a suspect. Detective Welch (Houston) arrested Le and took him to the offices of a Houston city magistrate (the office had been designated as a juvenile processing office under section 52.025, Texas Family Code). The magistrate gave Le the required juvenile warnings with no one else present in the room. Le was then taken to the Houston Police Department homicide division, where Detective Welch and another police officer interviewed him. He gave a statement admitting to his part in the murder and attempted robbery of the victim, but he did not sign the statement at that time. Finally, Le was taken to another magistrate and given the warnings again. At that time he signed his statement, without any police officers being present.

Le was certified to stand trial as an adult and indicted by the grand jury for capital murder. He moved to suppress his written statement, but the trial court denied the motion. The statement was admitted at Le's trial.

The jury found him guilty, and the court sentenced him to life in prison.

The Court of Criminal Appeals held that the officer may take the child to a juvenile processing office but there is no requirement to do so. The juvenile processing office is the only place an officer can take the child other than the five options presented in section 52.02(a). The taking of the juvenile to the juvenile processing office, however, does not dispense with the requirement that, subsequently, the officer, "without unnecessary delay," do one of the five possibilities listed in section 52.02(a).

A single office cannot simultaneously qualify as both a "juvenile processing office" under section 52.025 and "an office or official designated by the juvenile court" under section 52.02(a)(2). The language of section 52.02 dictates what an officer must do "without unnecessary delay" when he takes a child into custody.

Sections 52.025 was intended to create a separate place for completing necessary paperwork pursuant to an arrest and after doing so, the officers would then comply with section 52.02(a). Thus, in the case of *Baptist Vie Le*, the Detective after leaving the juvenile processing office was required to do one of the options listed in section 52.02(a) and taking Le to the homicide division did not constitute any of the options.

In *Le*, the court reaffirms its decision in *Comer v. State*, 776 S.W.2d 191 (Tex. Crim. App. 1989) where it concluded:

*the clear intent of the statutory scheme as a whole...from this point on [is that] the decision as to whether further detention is called for is to be made, not by law enforcement personnel, but by the intake or other authorized officer of the court...It appears that...the Legislature intended to*

restrict involvement of law enforcement officers to the initial seizure and prompt release or commitment of the juvenile offender...

The court in *Le* states:

*The Legislature has set forth very specific actions which a law enforcement officer must take when arresting a juvenile. We are aware of the disturbing increase in juvenile crime in our state, and we are sympathetic to law enforcement's efforts to deal with violent juvenile offenders. Nevertheless, we must not ignore the Legislature's mandatory provisions regarding the arrest of juveniles. We informed the citizenry, a decade ago in a unanimous opinion, of the Legislature's clear intent to reduce an officer's impact on a juvenile in custody. Today we remind police officers of the Family Code's strict requirements. ... While section 52.025 presents another option for law enforcement personnel, this option's use does not dispense with other Family Code requirements.*

*... Section 52.025 does not 'trump' section 52.02(a). The two statutes must be read together. While section 52.025 presents another option for law enforcement personnel, this option's use does not dispense with the other Family Code requirements. Upon leaving the juvenile processing office (the magistrate's office where the first warnings were given in this case) with *Le*, Detective Welsh was required to follow Section 52.02 (a) and he did not... .*

The Court found error in the admission of *Le*'s statement and remanded the case to the court of appeals for a harm analysis.

These are serious cases dealing with serious crimes, and judges are encouraged to get a copy of the *Comer* and *Le* cases and read them carefully. Even if judges do the job right and properly warn a juvenile in a similar case, it can be reversed because of errors in the

application of section 52.02, F.C. Judges should ask the following questions to be sure that the provisions in the Family Code are properly applied:

1. Are you named a "designated official" by your juvenile court?
2. Is your court, or home for that matter, designated as a juvenile processing office?
3. Are your officers asking "the officer designated by the juvenile court" for permission to interrogate prior to taking a statement?
4. Are the parents notified?
5. Once the officer leaves the "juvenile processing office," he/she must comply with section 52.02(a)

See also:

*In the Matter of C.R.*, Third District Court of Appeals, Austin, 1999 Tex. App. LEXIS 3979, May 27, 1999. Found statement admitted in violation of section 52.02(b), for failure to notify parent after child taken into custody, reversed and remanded. Found trial court's error in admitting statement was not harmless.

*Reaz Ahmed v State*, (unpublished) August 30, 1999, 1999 Tex. App. LEXIS 6519. (Fifth District Court of Appeals, Dallas) *Comer* applied to Oral Statement not given in a room designated by the Juvenile Court as the juvenile processing office. Oral statement should have been excluded but other evidence found sufficient to sustain jury verdict.

*Gonzales v. State*, 9 S.W.3d 267, November 4, 1999. (First District Court of Appeals, Houston) Reversed based on "*Le*". Even though the warning requirements were met under section 51.095(1)(A), confession ruled inadmissible because of parental notice

violation. (Family Code section 52.02(b))

*Roquemore v. State*, 11 S.W.3d 395, January 13, 2000 (First District Court of Appeals, Houston) Holding Texas Family Code section 52.02(a) did not operate to exclude appellant's voluntary statements that were not the result of custodial interrogation.

## FUNDS FOR JUVENILE PROGRAMS

by Linda Kilgore  
Court Administrator, Baytown

One of the major problems facing municipal courts in Texas is the handling of juvenile offenders. What can be done to prevent the at-risk juvenile from becoming an adult criminal? Most courts and judges agree that a program of intervention is needed, but many obstacles make this a difficult task. Fines, community service and some forms of detention are about the only options available to the judges. Fines are usually paid by the parents; community service opportunities are very limited; and detention will many times compound the problem.

In searching for better answers, I realized that the first step was to secure funding. I applied for and received funds from the JAIBG\* Program through the Governor's Office. This grant allowed us to implement a program which we named the R.A.P. Program.

R.A.P. stands for Responsibility, Accountability and Pride. It is offered as a form of alternative sentencing for juvenile offenders handled in our court system. The juvenile is placed on six-month probation and as a condition of this probation he/she must attend a

program consisting of two parts. The first part is a four-hour classroom-type session requiring the attendance of the juvenile and a parent or guardian on a Saturday morning in the courtroom. The parent/guardian attends a parenting class while the juvenile meets with various court officials who stress the importance of the juveniles accepting responsibility for their actions and facing the consequences of these actions.

The second session consists of three hours of court-supervised community service. These juveniles have found themselves working at the animal shelter, picking up trash in city parks and painting over graffiti in our city. They wear bright orange vests and gloves, carry trash bags and pray that their friends don't drive by and see them.

A requirement of the JAIBG Program is to form a coalition. The coalition consists of representatives from Municipal Court, Harris County Juvenile Probation, Harris County Precinct 3, Communities in Schools, Truancy Division of the school district, Police Department Truancy Officers, and also the San Jacinto Mall Security. Input from this coalition has been invaluable and assures the fact that we are all on the same page. This allows us to have as much information as possible about the juvenile at the time of his/her court appearance.

Another provision, which we plan to add to the program in August, is to require an attendance record from the school for each juvenile who is enrolled in the program. This will be required throughout the entire probation period.

The R.A.P. Program has been well received by juveniles and parents. Parents are especially pleased that the offense will not be on the child's record. It is still too soon to accurately

measure the full effectiveness of the program on juvenile crime in our community and the rate of recidivism. Since the inception of our program in October 1999, we have not had to require anyone repeat the program.

Many Baytown Municipal Court officials willingly give of their free time to make this program work. Only with everyone's cooperation can it be a really effective deterrent to juvenile crime.

The Baytown Municipal Court has applied for another grant for 2000-2001 so that R.A.P. can be continued and enhanced.

*\*JAIBG stands for Juvenile Accountability Incentive Block Grant. For information on this program, contact Nicole Lievsay at 512/463-6472.*

## **SCHOOL VIOLENCE AND ITS IMPACT ON THE COURTS**

By Ryan Kellus Turner  
Program Attorney, TMCEC

In recent months, incidents of violence in schools have become so frequent that they disturbingly appear commonplace in the news headlines.

National and state statistics suggest a disturbing trend of increased weapons and violence in the school place. The notion of schools being sanctums of learning, secure from the perils of criminality, has been called into question in an unprecedented manner. Tragedies like the killings at Columbine High School in Littleton, Colorado have resulted in school districts throughout the nation operating in an

oppressive climate of escalated caution.

Schools with a zero tolerance approach to student misbehavior have resulted in more criminal complaints being filed against students. Consequently, while executing their duties, law enforcement and members of the judiciary increasingly play a role in facilitating discipline in schools (a role once traditionally reserved for the school's vice-principal).

With no change in social climate in sight, municipal court judges should familiarize themselves with the Class C and fine-only offenses they may encounter as a judge, as well as the higher offenses they may experience as a magistrate. A chart outlining these offenses is found on Page 11 in this newsletter.

Crimes committed in schools require law enforcement, the judiciary and attorneys to consider offenses in a different context (e.g., the assault of a teacher, disabled student or teacher's aide who is over age 65 can constitute a higher classification of offense). Additionally, not all of the applicable offenses are contained in the Penal Code. The Education Code contains its own penal provisions.

**FOR YOUR  
COURT**

**SCHOOL  
VIOLENCE  
REPORT**

The Texas Attorney General's Office has released a school violence prevention report. The Report's recommen-

dations include utilizing the Texas School Safety Center as a clearinghouse for information related to school violence prevention, expanding conflict resolution programs, implementing and/or establishing character education programs and having all school districts work with law enforcement to devise critical response plans, and encouraging community outreach to combat gang activity. The latest TEA statistics in the 98-99 school year include, nearly 51,000 incidents of assaults against students, just under 3,800 incidents of assaults against teachers or staff and nearly 500 guns confiscated.

The publication is entitled *Attorney General's School Violence Prevention Task Force: Final Report, May 2000*. It is available on the Attorney General's web site located at [www.oag.state.tx.us](http://www.oag.state.tx.us) and can also be obtained by calling the Attorney General's Public Information and Assistance Division at 800/252-8011.

## **SCHOOL VIOLENCE: WHY IT MATTERS TO YOU**

**Municipal court judges constitute 36 percent of the magistrates in Texas. Magistrates should be familiar with offenses related to "school violence" for the purposes of issuing lawful arrest and search warrants.**

**SB 104, which went into effect on September 1, 1999, increases civil liability for municipalities who keep school campuses open after regular school hours for recreational purposes, latchkey programs or tutoring.**

**Section 37.104 of the Education Code specifically provides that municipal and justice courts have jurisdiction of the offenses detailed in subchapter D pertaining to the protection of school buildings and grounds.**

# **TEXANS STANDING TALL**

Texans Standing Tall (TST) is one of 12 statewide coalitions funded by the Robert Wood Johnson Foundation to reduce underage drinking. This organization works to create community collations of groups and individuals who want to take a leadership role in education and raising awareness in communities about health issues related to underage drinking.

This summer TST is sponsoring a Policy Seminar on Underage Drinking: *Strategizing for Success, Youth and Adults Working Together*. It is offered on July 13-14, 2000 in Austin at the Thompson Conference on the campus of the University of Texas. There is a \$50 registration fee.

For additional information about this organization and its programs, contact Ellen Ward, Executive Director, Texans Standing Tall, 611 South Congress Avenue, Suite 506, Austin, Texas 78704-1733 (512/442-7501). The web site is located at [www.tst.citysearch.com](http://www.tst.citysearch.com).

*Note: If a judge decides to join TST, it should be as an individual member so not to lend the prestige of the judicial office to TST (Canon 2, Code of Judicial Ethics).*

## **RESOURCE MATERIALS**

The U.S. Department of Justice offers many publications related to juveniles, crime and justice. For a catalog, contact: NCJRS, P.O. Box 6000, Rockville, MD 20849-6000. Several publications are described below and may be ordered at no charge. Place

your order through the automated telephone ordering system by dialing 800/851-3420 and select option 5. For more than 20 items, write NCJRS at the catalog address listed previously, or call 301/519-5500.

*Evaluation of the Children at Risk Program: Results 1 Year After the End of the Program.* Adele Harrell, Shannon Cavanagh, and Sanjeev Sridharan, National Institute of Justice. 1999. 12 pp. NCJ 178914.

Available electronically at <http://www.ncjrs.org/jjdp.htm#178914>.

Presents an evaluation of the Children at Risk (CAR) drugs and delinquency prevention program for high-risk 11- to 13-year-old adolescents living in narrowly defined and severely distressed neighborhoods in five cities. CAR delivered a broad range of integrated services to the youths and members of their households. The study found that CAR youths participated in more positive activities (for example, school clubs, religious groups and sports) and reported attending more drug and alcohol abuse programs during the program period than did youths in the control group. In the year after the program ended, CAR youths were less likely than control group youths to have used gateway (marijuana, alcohol, inhalants, or cigarettes) and serious drugs, sold drugs or committed violent crimes.

*An Inventory of State Prevention Activities Funded Under the 20 Percent Prevention Set-Aside of the Substance Abuse Prevention and Treatment Block Grant.* The National Association of State Alcohol and Drug Abuse Directors, Inc. Office of National Drug Control Policy. 1999. 384 pp. NCJ 179168.

Provides a detailed compilation of prevention activities funded by the 20 percent set-aside from the Substance

*Resources continued on Page 14*

# SCHOOL VIOLENCE CHART FOR MAGISTRATES: RELATED OFFENSES UNDER TEXAS LAW

## EDUCATION CODE OFFENSES

### *Illegal Organizations*

Fraternalities, Sororities, Secret Societies, and Gangs	Sec. 37.12	Class C Misdemeanor. Note: the Penal Code contains two distinct higher offenses which pertain only to gangs: Sec. 22.015 "Coercing, Soliciting, or Inducing Gang Membership" (via threats = state jail felony), (via serious injury = 3 <sup>rd</sup> degree felony); "Soliciting Membership in a Criminal Street Gang" (3 <sup>rd</sup> degree felony, 2 <sup>nd</sup> degree felony for subsequent offenses)
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### *Disruption of Educational Activities*

Disruption of Class	Sec. 37.124	Class C misdemeanor
Disruption of Transportation	Sec. 37.126	Class C misdemeanor
Disruptive Activities	Sec. 37.123	Class B misdemeanor (Note: Comparable Class B Penal Code offenses: Sec. 42.02 – "Riot," Sec. 42.03 – "Obstructing Highway or Other Passageway," and Sec. 42.05 – "Disruption of Meeting or Procession")
Exhibition of a Firearm	Sec. 37.125	3 <sup>rd</sup> degree felony

### *Hazing Related Offenses*

Personal Hazing	Sec. 37.152	With no serious bodily injury (Class B misdemeanor) With serious bodily injury (Class A misdemeanor) Resulting in death (state jail felony)
Organizational Hazing	Sec. 37.153	Fine-only: \$5,000-\$10,000 or not less than \$5,000 nor double the amount lost or expenses incurred

### *Local School District Rules*

Rules Adopted by School Board of Trustees - gives local school boards the authority to adopt "rules for the safety and welfare of students, employees, and property" and other rules it considers necessary to the governance of the school district.	Sec. 37.102	Violation of a rule under this section is a Class C misdemeanor
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## PENAL CODE OFFENSES

### *Assault and Offenses against Public Administration*

Assault	Sec. 22.01	Offensive/provocative physical contact or threats of imminent bodily injury (Class C misdemeanor); Bodily injury or contact with elderly or disabled persons (Class B); If committed against a teacher or other "public servant" or if defendant has been convicted of domestic violence (3 <sup>rd</sup> degree felony)
Terroristic Threat	Sec. 22.07	Resulting in an emergency response or causing fear of bodily injury (Class B misdemeanor); Preventing or interrupting occupation of various; Impairing or interrupting public communications, transportation, utilities, or other public services (3 <sup>rd</sup> degree felony)
Retaliation	Sec. 36.06	3 <sup>rd</sup> degree felony

### *Offenses against Property and Public Order*

Trespass	Sec. 30.05	Class B misdemeanor; Class A misdemeanor if the defendant carries a deadly weapon during the offense (Note that under Sec. 37.107 of the Education Code "Trespass on School Grounds" is a Class C misdemeanor)
Disorderly Conduct	Sec. 42.01	An offense under this section is a Class C misdemeanor unless it is alleged that the defendant discharges a firearm in a public place (excluding public roads or shooting ranges) or displays a firearm or other deadly weapon. In such case it is a Class B misdemeanor. Under Penal Code Sec. 12.43 (Penalties for Repeat and Habitual Offenders), if the defendant has been convicted three times of disorderly conduct, public intoxication, or any combination of the two offenses and each prior offense was committed in the preceding 24 months the offense may be prosecuted as a Class B misdemeanor.

### *Weapon-Related Offenses*

Weapons in Prohibited Places (e.g. schools, courts)	Sec. 46.03	3 <sup>rd</sup> degree felony
Enhanced-Penalty if Offense Committed within Weapon-Free Zone	Sec. 46.11	The punishment prescribed for the next highest offense if it is shown on trial beyond a reasonable doubt that the offense was committed in a place the defendant knew was on school grounds, within 300 feet of a school, school function, or a UIL sanctioned event.
Unlawful Transportation of Certain Weapons	Sec. 46.06	Class A misdemeanor (Note: under subsection (a)(2) the offense is a state jail felony if the defendant intentionally or knowingly provides, or offers to provide, a handgun to a child younger than 18)
Hoax Bomb	Sec. 46.08	Class A misdemeanor
Components of Explosives	Sec. 46.09	3 <sup>rd</sup> degree felony
Making a Firearm Accessible to a Child	Sec. 46.13	Class C misdemeanor. If the child discharges the firearm and causes the death or serious bodily injury to himself or another person the offense is a Class A misdemeanor.

# TRUANCY/FAILURE TO ATTEND SCHOOL

	EDUCATION CODE (FAILURE TO ATTEND SCHOOL)	FAMILY CODE (TRUANCY)
<b>Offense</b>	Sec. 25.094. Failure to Attend School The unexcused voluntary absence of a child on 10 or more days or parts of days within a six-month period or three or more days or parts of days within a four-week period from school without the consent of his or her parent	Sec. 54.021 Truancy The unexcused voluntary absence of a child on 10 or more days or parts of days within a six-month period or three or more days or parts of days within a four-week period from school without the consent of his or her parent
<b>Jurisdiction</b>	Yes. (See Art. 4.14, C.C.P., Sec. 29.003, G.C. and Sec. 51.03, F.C.)	Sec. 54.021, F.C. <ul style="list-style-type: none"> <li>Juvenile court may waive its exclusive original jurisdiction and transfer the case to the municipal or justice court.</li> <li>The waiver may be for an individual case or all cases in which a child is alleged to have engaged in truancy effective for a period of one year.</li> <li>Court is not required to accept case when juvenile court waives jurisdiction.</li> </ul>
<b>Waiver of Jurisdiction - Transfer to Juvenile Court</b> Sec. 51.08, F.C.	Under age 17: <ul style="list-style-type: none"> <li><b>May waive</b> jurisdiction over first and second violations</li> <li><b>Shall waive</b> jurisdiction after two previous convictions of non-traffic fine-only offenses except tobacco offenses</li> </ul> Age 17 or older: <ul style="list-style-type: none"> <li>Retains jurisdiction over all offenses</li> </ul>	
<b>Age</b> (Note: See also Sec. 8.07, P.C. Age Affecting Responsibility)	Sec. 25.085. Compulsory School Attendance <ul style="list-style-type: none"> <li>Under age 6, if previously enrolled in 1st grade</li> <li>At least age 6 and has previously enrolled in first grade and who has not completed the school year in which his or her 18th birthday falls</li> </ul> (See Sec. 25.086 for Exemptions)	Sec. 51.02(2), F.C., Definitions Age 10 or older and under age 17
<b>Appearance</b>	Art. 45. 0215, C.C.P. Under age 17: <ul style="list-style-type: none"> <li>Must be in open court</li> <li>Court must summon parent or guardian</li> </ul> Age 17 or older: <ul style="list-style-type: none"> <li>May appear in open court or by mail</li> <li>Parent not required to appear with child</li> </ul>	Sec. 54.021(g) and (h), F.C. Under age 17: <ul style="list-style-type: none"> <li>Must be in open court</li> <li>Court must summon parent or guardian</li> </ul>
<b>Penalties</b> Sec. 25.094, E.C.; Secs. 54.021, and 54.022, F.C	Class C misdemeanor; maximum possible penalty - \$500 In addition to any fine, a court may enter an order pursuant to Sec. 25.094(c), E.C. that includes one or more sanctions listed in Sec. 54.021(d), F.C.: <ul style="list-style-type: none"> <li>attend preparatory class for GED (older child that will not do well in classroom environment) or, if child is 16 or older, take the GED exam</li> <li>attend a special program listed under 54.021(d)(2) <ul style="list-style-type: none"> <li>an alcohol and drug abuse program</li> <li>rehabilitation</li> <li>counseling, including self-improvement counseling</li> <li>training in self-esteem and leadership</li> <li>work and job skills training</li> <li>training in parenting, including parental responsibility</li> <li>training in manners</li> <li>training in violence avoidance</li> <li>sensitivity training</li> <li>training in advocacy and mentoring</li> </ul> </li> <li>attend class for student at risk of dropping out of school (may require parent to attend with child)</li> <li>complete community service</li> <li>suspend driver's license, if child has one</li> <li>attend school</li> <li>attend special tutorial classes</li> </ul> Sec. 54.022, F.C.: require a special program that is in best interest of child (rehabilitation, counseling, self-esteem and leadership, work and job self-improvement, parenting, manners, violence avoidance, tutoring, sensitivity training, parental responsibility, community service, restitution, advocacy or mentoring program - parents can be required to pay \$100 for cost of program)	On a finding of truant conduct, a court may enter an order that includes one or more of the following: <ul style="list-style-type: none"> <li>attend preparatory class for GED (older child that will not do well in classroom environment) or, if child is 16 or older, take the GED exam</li> <li>attend a special program listed under 54.021(d)(2) <ul style="list-style-type: none"> <li>an alcohol and drug abuse program</li> <li>rehabilitation</li> <li>counseling, including self-improvement counseling</li> <li>training in self-esteem and leadership</li> <li>work and job skills training</li> <li>training in parenting, including parental responsibility</li> <li>training in manners</li> <li>training in violence avoidance</li> <li>sensitivity training</li> <li>training in advocacy and mentoring</li> </ul> </li> <li>attend class for student at risk of dropping out of school (may require parent to attend with child)</li> <li>complete community service</li> <li>suspend driver's license, if child has one</li> <li>attend school</li> <li>attend special tutorial classes</li> </ul>

## TRUANCY/FAILURE TO ATTEND SCHOOL *continued*

	EDUCATION CODE	FAMILY CODE (TRUANCY)
<b>Violation of a Court Order</b> Art. 45.050, C.C.P.; Sec. 21.002, G.C.; Secs. 51.03(a)(3), 52.027(h), and 54.021(d), F.C.	Sec. 51.03(a)(3), F.C. and Art. 45.050, C.C.P. Under age 17: <ul style="list-style-type: none"> <li>• May refer the child to the juvenile court for delinquent conduct for contempt of the municipal court order</li> </ul> Art. 45.050, C.C.P. and Sec. 52.027(h), F.C. <ul style="list-style-type: none"> <li>• May hold child (under age 17) in contempt of court and assess a fine only not to exceed \$500</li> </ul> Sec. 25.094(d), Failure to Attend: <ul style="list-style-type: none"> <li>• If child violates a court order under Sec. 54.021(d), F.C., court required to transfer the case to juvenile court in county where child resides (trial de novo)</li> </ul> Age 17 or older: Sec. 21.002, G.C. <ul style="list-style-type: none"> <li>• May find child in contempt and assess a fine of up to \$100 and/or 3 days in jail</li> </ul>	Sec. 51.03(a)(3), F.C. and Art. 45.050, C.C.P. <ul style="list-style-type: none"> <li>• May refer the child (under age 17) to the juvenile court for delinquent conduct for contempt of the municipal court order</li> </ul> Art. 45.050, C.C.P. and Sec. 52.027(h), F.C. <ul style="list-style-type: none"> <li>• May hold child in contempt of court and assess a fine only not to exceed \$500 (There is no provision requiring municipal court to transfer case to juvenile court upon violation of a court order)</li> </ul> Sec. 54.021(e), F.C. <ul style="list-style-type: none"> <li>• Order requiring parent to attend class for at risk students is enforceable by contempt.</li> </ul>
<b>Expungement</b>	Sec. 25.094(g) <ul style="list-style-type: none"> <li>• May apply to municipal court at age 18 if only one conviction for offense of Failure to Attend School</li> </ul>	
<b>Custody</b> Secs. 52.027 and 54.021(g), F.C.	A child may be taken into custody. Child under age 17 may be: <ul style="list-style-type: none"> <li>• released to parent, guardian, custodian or other responsible adult</li> <li>• taken before a municipal or justice court</li> <li>• taken to a place of nonsecure custody and held for not more than 6 hours</li> </ul> (If the minor's case has been referred to juvenile court, the child may be detained in a juvenile detention facility.) Sec. 25.094(e), Failure to Attend School: court may order a peace officer to take a child into custody if there are reasonable grounds to believe child committed the offense of Failure to Attend School.	<ul style="list-style-type: none"> <li>• Court must summon parent or guardian to personally bring child to truancy hearing.</li> </ul>
<b>Reports</b>	Sec. 51.08(c), F.C. Under age 17: <ul style="list-style-type: none"> <li>• Juvenile court when case filed</li> <li>• Juvenile court when case disposed of</li> </ul> Secs. 521.201 and 521.294, T.C. Under age 17: <ul style="list-style-type: none"> <li>• DPS, if minor fails to appear or fails to pay the fine and costs DPS when case adjudicated</li> </ul>	
<b>Parents or Guardians</b>	Sec. 25.093. <ul style="list-style-type: none"> <li>• May be charged with the offense of Thwarting Compulsory Attendance which is a Class C misdemeanor</li> </ul> Art. 45.0215, C.C.P. and Sec. 54.022(d), F.C. <ul style="list-style-type: none"> <li>• Court required to issue summons for parents. After summons, failure of parent to appear with child in court during all proceedings is a Class C misdemeanor.</li> </ul>	Sec. 54.021(h) <ul style="list-style-type: none"> <li>• Failure of the parent to appear at the hearing after being summoned is a Class C misdemeanor offense.</li> </ul> Sec. 25.093, E.C. <ul style="list-style-type: none"> <li>• Parent may be charged with the offense of Thwarting Compulsory Attendance which is a Class C misdemeanor</li> </ul>

Because this chart is just a synopsis of the statutes regarding the offenses of *Failure to Attend School* and *Truancy*, courts should review the statutes in order to familiarize themselves with the rules for handling these types of cases.

As noted in the chart, although the offenses of *Failure to Attend School* and *Truancy* cover the same conduct, there are differences. One of the biggest ones is that the offense of *Failure to Attend School* is a criminal offense (Class C misdemeanor), and the offense *Truancy* is a civil offense with only sanctions and not a fine as a penalty. Because *Truancy* is not a Class C misdemeanor, there is no authority to issue a citation for this offense. To charge this offense, a sworn complaint must be filed.

Another difference is the age that a child can be charged with each offense. Because the Family Code defines "child" as a person who is at least age 10 and under age 17, a child under age 10 could be charged only with the offense of *Failure to Attend School*. Also, the Education Code requires school attendance for under age six if the child started before age six and under age 18. Thus, a person age 17 charged with the offense of *Failure to Attend School* does not fall under the same rules regarding juveniles. Furthermore, a child charged with *Failure to Attend School* may petition the municipal court to expunge the record under certain circumstances, but a child charged with *Truancy* is not entitled to petition municipal court for expunction.

Abuse Prevention and Treatment (SAPT) Block Grant for each state and the District of Columbia. The SAPT Block Grant is a federal program that allocates funds for prevention and treatment activities for alcohol, tobacco and other drugs. This ONDCP report describes programs designed to educate, counsel and provide activities to reduce the risk of substance abuse in a given community. Each state profile includes a description of the state's prevention system; funding, resource and contact information: programs and services; data collection activities; and support services. This report also contains five appendixes, including a list of state documents used to compile data and a contact list of NASADAD members.

*1997 National Youth Gang Survey.* National Youth Gang Center. Office of Juvenile Justice and Delinquency Prevention. 1999. 88 pp. NCJ 178891.

Available electronically at <http://ojjdp.ncjrs.org/pubs/gang.html#178891>.

Presents findings of the 1997 National Youth Gang Survey, the largest and most comprehensive gang survey to date. This OJJDP summary first describes the survey's methodology and then discusses the prevalence of youth gangs, the number of jurisdictions with active youth gangs, the number of youth gangs and gang members, youth gangs and crime, youth gangs and drugs, youth gang migration, law enforcement responses, and perceptions of the gang problem.

*Enabling Prosecutors to Address Drug, Gang, and Youth Violence.* Heike P. Gramckow and Elena Tompkins. Office of Juvenile Justice and Delinquency Prevention. 1999. 12 pp. NCJ 178917.

Available electronically at <http://www.ojjdp.ncjrs.org/pubs/general.html#178917>.

Features one of three Juvenile Accountability Incentive Block Grants (JAIBG) program purpose areas that focus on enhancing the ability of prosecutors to address juvenile crime. This OJJDP bulletin, one of a series of bulletins on the JAIBG program, recommends ways to enable prosecutors to address drug, gang and youth violence. Data on recent trends in juvenile violence, drug offenses and gang-related offending; possible prosecutorial responses to such offenses; and examples of promising prosecutor-led programs are provided.

## **TOBACCO AWARENESS & COMMUNITY SERVICE**

by Ryan Kellus Turner  
TMCEC Program Attorney

The language of section 161.253 (a) of the Health and Safety Code is clear and unambiguous. "On conviction of an individual for an offense under section 161.252 [possession, purchase, consumption, or receipt of cigarettes or tobacco products by a minor], the court *shall* suspend execution and *shall* require the defendant to attend a tobacco awareness program approved by the commissioner" (emphasis added).

The number of communities with a tobacco awareness program has increased since the legislation mandating attendance by underage tobacco offenders was passed in 1997. However, a vast number of communities, especially those in rural areas, con-

tinue to have no such program.

The Legislature realized that the initial lack of instructors and other logistical dilemmas, such as having a certified instructor in the proximate area of the community, would create problems, especially for smaller towns. Accordingly, section 161.253 (c) of the Health & Safety Code provides that "if the defendant resides in a rural area of this state or another area in which access to a tobacco program is not readily available, the court shall require the defendant to perform 8 to 12 hours of tobacco-related community service."

Interpreting the meaning of "readily available" is problematic. The term is not defined by statute and is subject to interpretation. Thus, ultimately, the meaning of the term and whether offenders must attend a course is subject to the discretion of the judge. While some courts may order a juvenile offender to travel 120 miles round trip to the nearest town offering a tobacco awareness course, other courts may determine that a tobacco awareness program is not "readily available" if it requires the defendant to go beyond the city limits.

Reconciling the language of section 161.253(a) and section 161.253(c) can be circular and difficult. Since section 161.253 contains no impetus to create tobacco awareness programs in areas where they are deemed to not be readily available, many of the communities that initially had no tobacco awareness programs continue to have no tobacco awareness programs. In such communities, tobacco-related community service may be viewed as the only option available.

The fact of the matter, however, is that the resources necessary for implementing a tobacco awareness program are likely already available in such communities. If you would like your municipality to have more informa-

tion about the mechanics of tobacco awareness programs, ethical-related issues, and profiles of who are considered ideal instructors, contact Barry Sharp of the Texas Department of Health at 800-345-8647.

## TOBACCO GUIDE

The Office of Tobacco Prevention and Control has issued a new instructor directory for the Texas Youth Tobacco Program. The instructor directory includes information on the curriculum for the Tobacco Awareness Program, the Texas youth tobacco laws and where to turn for more information. In addition, the directory includes report forms, staff information, Alcohol Awareness providers, and a listing of Tobacco Awareness Course providers.

The Tobacco Awareness Course (or community service if a course is unavailable) must be ordered when youthful offenders are convicted of tobacco related offenses.

The instructor directory will be sent to all municipal and justice courts in Texas.

The Office of Tobacco Prevention and Control oversees the course and the tobacco course providers. It is a division of the Texas Department of Health, Bureau of Disease, Injury, and Tobacco Prevention.

For more information, contact Barry Sharp at the Office of Tobacco Prevention and Control by calling 512/458-7402 or by email at [barry.sharp@tdh.state.tx.us](mailto:barry.sharp@tdh.state.tx.us).

## THE TEEN FILES

AIMS Multimedia offers a series of videos for teens on smoking, drinking, hate, sex, violence, and drugs. These videos may be useful resources in courts that offer in-house education

programs as a condition under deferred disposition. *The Truth About Drinking*, for example, shows the potential consequences of alcohol use from every perspective, including: how drinking impairs a person's coordination, vision and reaction time; how the brain and other organs suffer lasting damage from alcohol use; how a drunk person drives; and how drinking can lead to spending months in a rehab center. The program is hosted by Leeza Gibbons and is available in a 30- and 46-minute version. Ordering information:

Number 2256-EN-VID-NR (video)  
\$149.95. Running time: 30 minutes.

Number 2255-EN-VID-NR (Video)  
\$149.95. Running time: 46 minutes.

Available from AIMS Multimedia, 9710 DeSoto Avenue, Chatsworth, California 91311, telephone 800/367-2567 or 818/773-4300, fax 818/341-6700.



## TMCEC RESOURCES NOW AVAILABLE

Each presiding municipal court judge in Texas was recently sent a set of the latest versions of the TMCEC *Bench Book* and *Forms Book*. Additional copies may be ordered from TMCEC for \$20 for the *Bench Book* and \$15 for the *Forms Book*, shipping included. Checks should be made payable to TMCEC. Since many of the larger municipal courts have more than one judge, TMCEC is able to offer additional copies of the *Bench*

*Book* to these associate judges at no charge. The presiding judge should return the coupon shown on this page to order additional books for associate judges and indicate their names and position.

TMCEC will have this material available on CD-ROM and 3.5" diskette (in PC format only) in July 2000. Please use the form on this page to order these materials (one per court) at no charge. Both the CD-ROM version and the diskette are in Microsoft Word version '97. Please check the TMCEC web site [[www.tmcec.com](http://www.tmcec.com)] in mid-summer for the online version of the *Bench Book*.

### TMCEC *Bench Book/Forms Book* Order Form

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Return by mail or fax to: TMCEC  
1601 Rio Grande, Suite 550, Austin, TX 78701  
FAX 512/435-6118

# TMCA Annual Awards Recipients

Year	TMCA Annual Meeting Site	Clerk/Court Administrator	Judge
1992	San Antonio	Angel Stallings, City of Port Aransas	The Honorable Toni Baggett, City of Plano
1993	Austin	Nicole Nguyen, City of Stafford	The Honorable Robert Kubena, City of Hallettsville
1994	South Padre	Sandy Shake, City of Ingleside	The Honorable Joe Pirtle, City of Seabrook
1995	New Orleans	Bertha Peikert, City of Morgan's Point	The Honorable Sam Alfano, City of Houston
1996	Port Aransas	Sharron Browning, City of Portland	The Honorable Cheryl Deal, City of Ingleside
1997	New Orleans	Winnie Kocot, City of Arlington	The Honorable Steve Williamson, City of Fort Worth
1998	Arlington	Hilda Phariss, City of Bryan	The Honorable Robin Smith, City of Midland
1999	San Antonio	Shirley Armstrong, City of Grand Prairie	The Honorable David Indorf, City of Sunnyvale
2000	Austin	Leisa Hardin, City of Crowley	The Honorable John Roberts, City of Waco

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## TMCEC MISSION STATEMENT

To provide high quality judicial education, technical assistance and the necessary resource material to assist municipal court judges, court support personnel and prosecutors in obtaining and maintaining professional competence.

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