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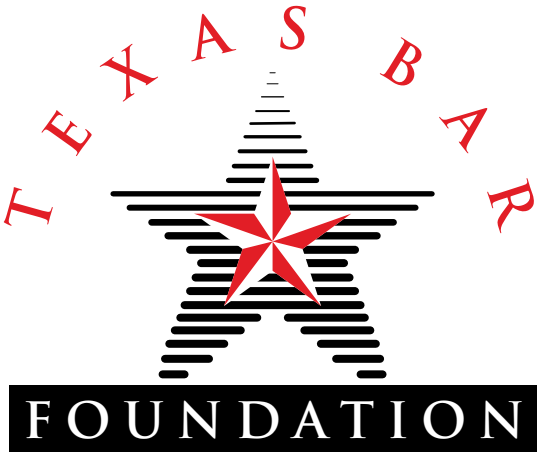
Texas Family Code 1984



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Texas Family Code

WITH TABLES
AND INDEX

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OCT 4 1984

As Amended through the 1983 Regular and First Called Sessions of the 68th Legislature

WEST PUBLISHING CO.
ST. PAUL, MINNESOTA

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Texas Family Code, Fifth Edition

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PREFACE

This Pamphlet contains the text of the Family Code as amended through the 1983 Regular and First Called Sessions of the 68th Legislature. The Family Code constitutes a unit of the Texas Legislative Council's statutory revision program. Title 1 of the Code was originally enacted by Acts 1969, 61st Leg., ch. 888; Titles 2 and 3 were added by Acts 1973, 63rd Leg., chs. 543 and 544, respectively; and Title 4 was added by Acts 1979, 66th Leg., ch. 98.

Disposition and Derivation Tables are included preceding the Code, thus providing a means of tracing repealed subject matter into the Code and, on the other hand, of searching out the source of Code sections.

A detailed descriptive word Index at the end of the Code is furnished to facilitate the search for specific textual provisions.

Comprehensive coverage of the judicial constructions and interpretations of the Code, together with cross references, references to law review commentaries discussing particular provisions, and other editorial features, is provided in the volumes of Vernon's Texas Statutes and Codes Annotated.

THE PUBLISHER

July, 1984

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*

EFFECTIVE DATES

The following table shows the date of adjournment and the effective date of ninety day bills enacted at sessions of the legislature beginning with the year 1945:

Year	Leg.	Session	Adjournment Date	Effective Date
1945	49	Regular	June 5, 1945	September 4, 1945
1947	50	Regular	June 6, 1947	September 5, 1947
1949	51	Regular	June 6, 1949	September 5, 1949
1951	52	Regular	June 8, 1951	September 7, 1951
1953	53	Regular	May 27, 1953	August 26, 1953
1954	53	1st C.S.	May 13, 1954	August 12, 1954
1955	54	Regular	June 7, 1955	September 6, 1955
1957	55	Regular	May 23, 1957	August 22, 1957
1957	55	1st C.S.	November 12, 1957	February 11, 1958
1957	55	2nd C.S.	December 3, 1957	March 4, 1958
1959	56	Regular	May 12, 1959	August 11, 1959
1959	56	1st C.S.	June 16, 1959	September 15, 1959
1959	56	2nd C.S.	July 16, 1959	October 15, 1959
1959	56	3rd C.S.	August 6, 1959	November 5, 1959
1961	57	Regular	May 29, 1961	August 28, 1961
1961	57	1st C.S.	August 8, 1961	November 7, 1961
1961	57	2nd C.S.	August 14, 1961	November 13, 1961
1962	57	3rd C.S.	February 1, 1962	May 3, 1962
1963	58	Regular	May 24, 1963	August 23, 1963
1965	59	Regular	May 31, 1965	August 30, 1965
1966	59	1st C.S.	February 23, 1966	*
1967	60	Regular	May 29, 1967	August 28, 1967
1968	60	1st C.S.	July 3, 1968	*
1969	61	Regular	June 2, 1969	September 1, 1969
1969	61	1st C.S.	August 26, 1969	*
1969	61	2nd C.S.	September 9, 1969	December 9, 1969
1971	62	Regular	May 31, 1971	August 30, 1971
1971	62	1st C.S.	June 4, 1971	September 3, 1971
1972	62	2nd C.S.	March 30, 1972	June 29, 1972
1972	62	3rd C.S.	July 7, 1972	*
1972	62	4th C.S.	October 17, 1972	January 16, 1973
1973	63	Regular	May 28, 1973	August 27, 1973
1973	63	1st C.S.	December 20, 1973	*
1975	64	Regular	June 2, 1975	September 1, 1975
1977	65	Regular	May 30, 1977	August 29, 1977
1977	65	1st C.S.	July 21, 1977	*
1978	65	2nd C.S.	August 8, 1978	November 7, 1978
1979	66	Regular	May 28, 1979	August 27, 1979
1981	67	Regular	June 1, 1981	August 31, 1981
1981	67	1st C.S.	August 11, 1981	November 10, 1981
1982	67	2nd C.S.	May 28, 1982	*
1982	67	3rd C.S.	September 9, 1982	*
1983	68	Regular	May 30, 1983	August 29, 1983
1983	68	1st C.S.	June 25, 1983	September 23, 1983

* No legislation for which the ninety day effective date is applicable.

DISPOSITION TABLE

Showing where provisions of former articles of the Civil Statutes and Penal Code of 1925 are covered in the Family Code.

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46a, § 1	11.04(b)
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	to
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§ 1b	—
§ 1c	—
§ 1d	11.09
§ 1e	—
§ 2	11.12
§ 3	16.04
§ 4	11.14
§ 5	16.07
§ 6(a)	15.02
§ 6(b)	16.05(c)
§ 6(c)	—
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§ 6	21.12
§ 7	21.21
§ 8	21.22
§ 9	21.23
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§ 21	21.35
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§ 26	21.40
§ 27	21.41
§ 28	21.42
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§ 30	21.44
§ 31	21.45(a), (c)
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DISPOSITION TABLE

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§ 37	21.66
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§ 39	—
§ 40	21.06
§ 41	21.01
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2331	11.08
2332	11.09
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2333	11.14
2334	11.13
2335 to 2337	15.05
2338—1, § 1	51.01
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§ 6(c)	54.02(c)
§ 6(d)	54.02(d)
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§ 6(f)	54.02(e)
§ 6(g)	54.02(a)(3)
§ 6(h)	54.02(f)
§ 6(i)	54.02(g)
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§ 13	1.36
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	1.06
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	5.61(a)
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	5.24(b)
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4627	4.01
4628	2.43
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subsec. (2)	3.05
4629, subsec. (3)	3.03
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subsec. (5)	3.04
subsec. (6)	3.07
4630	3.08
4631	3.21
	3.22
	3.23
4632	3.53
	3.60
	3.61
	3.64
4633	3.62
4634	3.57
4635	3.56 repealed
4636	3.58
4637	3.59
4638	3.63
4639	11.11
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§ 9	25.09
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§ 3	—
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5929	32.01
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5931	32.24
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6647	5.03
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406	1.81(b)
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493	—
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497	2.21

DERIVATION TABLE

Showing where provisions of the Family Code were formerly covered in the Civil Statutes and Penal Code of 1925.

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1.05	4605(c)
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1.23	4604d, § 3
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1.27	4604d, § 2
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1.33	4604d, § 1
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3.01	—
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3.03	4629(3)
3.04	4629(5)
3.05	4629(2)
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3.52	—
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3.54	—
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16.05(b)	—
16.05(c)	46a, § 6(b)
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32.03	—
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53.04	2338—1, § 7
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54.02(d)	2338—1, § 6(d)
54.02(e)	2338—1, § 6(f)
54.02(f)	2338—1, § 6(h)
54.02(g)	2338—1, § 6(i)
54.02(h)	2338—1, § 6(j)
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FAMILY CODE

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SUBTITLE A. THE MARRIAGE RELATIONSHIP

SUBTITLE B. PROPERTY RIGHTS AND LIABILITIES

TITLE 2. PARENT AND CHILD

SUBTITLE A. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

SUBTITLE B. UNIFORM ACTS AND INTERSTATE COMPACTS

SUBTITLE C. MISCELLANEOUS PROVISIONS

TITLE 3. DELINQUENT CHILDREN AND CHILDREN IN NEED OF SUPERVISION

TITLE 4. PROTECTION OF THE FAMILY

TITLE 1. HUSBAND AND WIFE

SUBTITLE A. THE MARRIAGE RELATIONSHIP

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SUBCHAPTER A. APPLICATION FOR MARRIAGE LICENSE

SUBCHAPTER B. MEDICAL EXAMINATION [REPEALED]

SUBCHAPTER C. UNDERAGE APPLICANTS

SUBCHAPTER D. CEREMONY AND RETURN OF LICENSE

SUBCHAPTER A. APPLICATION FOR MARRIAGE LICENSE

§ 1.01. Marriage License

A man and a woman desiring to enter into a ceremonial marriage shall obtain a marriage license from the county clerk of any county of this state. A license may not be issued for the marriage of persons of the same sex.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1596, ch. 577, § 1, eff. Jan. 1, 1974.]

§ 1.02. Application for License

Except as otherwise provided by Section 1.05 of this code, persons applying for a license shall:

(1) appear together or separately before the county clerk;

(2) submit for each applicant:

(A) proof of identity and age as prescribed by Section 1.04 of this code;

(B) a medical examination certificate or an exemption order as prescribed by Subchapter B of this chapter; [1] and,

(C) if required, the documents establishing parental consent, or a court order, as prescribed by Subchapter C of this chapter; [2]

(3) provide the information for which spaces are provided in the application for a marriage license; and,

(4) take the oath printed on the application and sign the application before the county clerk.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1597, ch. 577, § 2, eff. Jan. 1, 1974.]

1 Section 1.21 et seq.
2 Section 1.51 et seq.

§ 1.03. Application Form

(a) The county clerk shall furnish the application form as prescribed by the Bureau of Vital Statistics of the State Department of Health.

(b) The application form shall contain:

(1) a heading entitled "Application for Marriage License, ... County, Texas";

(2) spaces for each applicant's full name (including the woman's maiden surname), address, social security number, if any, date of birth, and place of birth (including city, county, and state);

(3) a space for indicating the document tendered by each applicant as proof of identity and age;

(4) spaces for indicating whether each applicant has been divorced within the last 30 days;

(5) printed boxes for the applicant to check "true" or "false" in response to the following statement: "I am not presently married.";

(6) printed boxes for each applicant to check "true" or "false" in response to the following statement: "The other applicant is not related to me as:

(A) an ancestor or descendant, by blood or adoption;

(B) a brother or sister, of the whole or half blood or by adoption; or

(C) a parent's brother or sister of the whole of [1] half blood.";

(7) a printed oath reading: "I SOLEMNLY SWEAR (OR AFFIRM) THAT THE INFORMATION I HAVE GIVEN IN THIS APPLICATION IS CORRECT.";

(8) spaces immediately below the printed oath for the applicants' signatures;

(9) a certificate of the county clerk that the applicants made the oath and the date and place that it was made (or that the applicant did not appear personally but the prerequisites for the license have been fulfilled as prescribed by Section 1.05 of this code);

(10) spaces for indicating the date of the marriage and the county in which it is performed; and

(11) a space for the address to which the applicants desire the executed license to be mailed.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1971, 62nd Leg., p. 2351, ch. 715, § 1, eff. June 8, 1971; Acts 1973, 63rd Leg., p. 1597, ch. 577, § 3, eff. Jan. 1, 1974.]

1 So in enrolled bill; probably should read "or".

§ 1.04. Proof of Identity and Age

The county clerk shall require proof of identity and age of each applicant to be established by a certified copy of the applicant's birth certificate or by some certificate, license, or document issued by this state or another state, the United States, or a foreign government.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 1.05. Absent Applicant

(a) If only one of the applicants is able to appear personally before the county clerk to apply for a marriage license, any adult person or the other applicant may apply on behalf of the absent applicant.

(b) The person applying on behalf of an absent applicant shall present to the clerk:

(1) the affidavit of the absent applicant as prescribed by Subsection (c) of this section;

(2) proof of the identity and age of the absent applicant as provided by Section 1.04 of this code;

(3) a medical examination certificate or an exemption order for the absent applicant as prescribed by Subchapter B of this chapter; [1] and

(4) if required, the documents establishing parental consent, or a court order, for the absent applicant as prescribed by Subchapter C of this chapter.[2]

(c) The affidavit of an absent applicant must include:

(1) the absent applicant's full name (including the maiden surname, if applicable), address, date of birth, place of birth (including city, county, and state), citizenship, and social security number, if any;

(2) a declaration that the absent applicant has not been divorced within the last 30 days;

(3) a declaration that the absent applicant is not presently married (unless to the other applicant and they wish to marry again);

(4) a declaration that the other applicant is not related to the absent applicant as:

(A) an ancestor or descendant, by blood or adoption;

(B) a brother or sister, of the whole or half blood or by adoption; or

(C) a parent's brother or sister of the whole or half blood;

(5) a declaration that the absent applicant desires to marry, and the name, age, and address of the person to whom the absent applicant desires to be married;

(6) the approximate date on which the marriage is to occur;

(7) the reason the absent applicant is unable to appear personally before the county clerk for the issuance of the license; and

(8) if the absent applicant will be unable to attend the ceremony, the appointment of any adult, except the other applicant, to act as proxy for the purpose of participating in the ceremony.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1598, ch. 577, § 4, eff. Jan. 1, 1974; Acts 1975, 64th Leg., p. 619, ch. 254, § 1, Sept. 1, 1975.]

1 Section 1.21 et seq.

2 Section 1.51 et seq.

§ 1.06. Execution of Application

(a) The county clerk shall:

(1) determine that all necessary information (other than the date of the marriage ceremony, the county in which it is conducted, and the name of the person who performs the ceremony) is entered in the application and that all necessary documents are submitted to him;

(2) administer the oath to each applicant appearing before the clerk;

(3) have each applicant appearing before the clerk sign the application in his presence; and

(4) execute his certificate on the application.

(b) A person appearing before the clerk on behalf of an absent applicant is not required to take the oath on behalf of the absent applicant.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1598, ch. 577, § 5, eff. Jan. 1, 1974.]

§ 1.07. Issuance of License

(a) The county clerk may not issue a license to the applicants if:

(1) either applicant fails to provide information as required by Sections 1.02 and 1.05 of the code;

(2) either applicant fails to submit proof of age and identity;

(3) either applicant is under 14 years of age and has not received a court order under Section 1.53 of this code;

(4) either applicant is 14 years of age or older but under 18 years of age and has received neither parental consent nor a court order under Section 1.53 of this code;

(5) either applicant fails to comply with the requirements of Subchapter B of this chapter;[1]

(6) either applicant checks "false" in response to a statement in the application, except as provided in Subsection (b) of this section, or fails to make a required declaration in an affidavit required of an absent applicant; or

(7) either applicant indicates that he or she has been divorced by a decree of a court of this state within the last 30 days.

(b) If an applicant checks "false" in response to the statement "I am not presently married," the county clerk shall inquire as to whether or not the applicant is presently married to the other applicant. If the applicant states that he is presently married to the other applicant, the county clerk shall record that statement on the license prior to the administration of the oath. The county clerk may not refuse to issue a license on the ground that the applicants are already married to each other.

(c) On the proper execution of the application, the clerk shall prepare the license. On the reverse side of the license he shall enter the names of the licensees and, for each of them, the date of the medical examination or the fact that an exemption

was obtained, and the name of the person appointed to act as proxy for an absent applicant, if any.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1599, ch. 577, § 6, eff. Jan. 1, 1974; Acts 1975, 64th Leg., p. 620, ch. 254, § 2, eff. Sept. 1, 1975.]

[1] Repealed.

§ 1.08. Recording

The county clerk shall record all licenses issued by him and shall record all documents submitted with applications for licenses or note a summary of them on the application.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 1.09. Violation by County Clerk

A county clerk or deputy county clerk who violates or fails to comply with any provision of this subchapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $200 nor more than $500.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

[Sections 1.10 to 1.20 reserved for expansion]

SUBCHAPTER B. MEDICAL EXAMINATION

§§ 1.21 to 1.38. Repealed by Acts 1983, 68th Leg., p. 2899, ch. 493, § 2, eff. Aug. 29, 1983

[Sections 1.39 to 1.50 reserved for expansion]

SUBCHAPTER C. UNDERAGE APPLICANTS

§ 1.51. Age Requirements: General Rules

Except with parental consent as prescribed by Section 1.52 of this code or with a court order as prescribed by Section 1.53 of this code, the county clerk shall not issue a marriage license if either applicant is under 18 years of age.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1599, ch. 577, § 7, eff. Jan. 1, 1974; Acts 1975, 64th Leg., p. 620, ch. 254, § 3, eff. Sept. 1, 1975.]

§ 1.52. Underage Applicant: Parental Consent

(a) If the applicant is 14 years of age or older but under 18 years of age, the county clerk shall issue the license if parental consent is given as prescribed by this section.

(b) Parental consent must be evidenced by a written declaration on a form supplied by the county clerk in which the person consents to the marriage and swears that he or she is a parent (when there is no judicially designated managing conservator or guardian of the applicant's person) or a judicially designated managing conservator or guardian (whether an individual, authorized agency, or court) of the applicant's person.

(c) Except as otherwise provided by this section, consent must be acknowledged before the county clerk at the time the application is made for the marriage license.

(d) If the person giving parental consent resides in another state, the consent may be acknowledged before an officer authorized to issue marriage licenses in that state.

(e) If the person giving parental consent is unable because of illness or incapacity to comply with the provisions of Subsection (c) or (d) of this section, the consent may be acknowledged before any officer authorized to take acknowledgments; but it must be accompanied by a physician's affidavit stating that the person giving parental consent is unable to be present because of illness or incapacity.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1599, ch. 577, § 7, eff. Jan. 1, 1974; Acts 1975, 64th Leg., p. 620, ch. 254, § 4, eff. Sept. 1, 1975.]

§ 1.53. Underage Applicant: Court Order

(a) A person who is under 18 years of age may petition in his own name in a district court for an order granting permission to marry. In all suits filed under this section, the trial judge may advance the cause if he determines that the best interest of the applicant would be served by an early hearing.

(b) The petition must be filed in the county where a parent resides if a managing conservator or a guardian of the person has not been appointed. If a managing conservator or a guardian of the person has been appointed, the petition must be filed in the county where the managing conservator or the guardian of the person resides. If no person authorized to consent to marriage for the child resides in this state, the petition must be filed in the county where the child lives.

(c) The petition shall include a statement of the reasons the child desires to marry, whether each parent is living or dead, the name and residence address of each living parent, and whether or not a managing conservator or a guardian of the person has been appointed for the child.

(d) Process shall be served as in other civil cases on each living parent of the child, or if a managing conservator or a guardian of the person has been appointed, on the managing conservator or guardian of the person. Citation may be given by publication as in other civil cases, except that notice shall be published one time only.

(e) The court shall appoint a guardian ad litem to represent the child in the proceeding and to speak for or against the petition in the manner he believes to be in the best interest of the child. The court shall prescribe a fee to be paid by the child for the

services of the guardian ad litem; and the fee shall be collected as are other costs of the proceeding.

(f) If, after a hearing, the court, sitting without a jury, believes marriage to be in the best interest of the child, it shall make an order granting the child permission to marry.

[Acts 1973, 63rd Leg., p. 1599, ch. 577, § 7, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 620, ch. 254, § 5, eff. Sept. 1, 1975.]

[Sections 1.54 to 1.80 reserved for expansion]

SUBCHAPTER D. CEREMONY AND RETURN OF LICENSE

§ 1.81. Expiration of License

(a) Unless both applicants were exempted by court order from the medical examination requirements of this chapter, the marriage license expires at the end of the 21-day period immediately following the date of the medical examinations (or the earlier of the two examinations if they were conducted on different days), if the marriage ceremony has not been conducted within that period. The person who is to conduct the marriage ceremony shall determine this information from the county clerk's endorsement on the license.

(b) A person who conducts a marriage ceremony after the license has expired is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $200 nor more than $500.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 1.82. Ceremony

(a) On receiving an unexpired marriage license, any authorized person may conduct the marriage ceremony.

(b) A person unable to appear for the ceremony may assent to marriage by the appearance of a proxy appointed in the affidavit prescribed by Section 1.05 of this code.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1600, ch. 577, § 8, eff. Jan. 1, 1974.]

§ 1.83. Persons Authorized to Conduct Ceremony

(a) The following persons are authorized to conduct marriage ceremonies:

(1) licensed or ordained Christian ministers and priests;

(2) Jewish rabbis;

(3) persons who are officers of religious organizations and who are duly authorized by the organization to conduct marriage ceremonies; and

(4) justices of the supreme court, judges of the court of criminal appeals, justices of the courts of appeals, judges of the district, county, and probate courts, judges of the county courts at law, courts of domestic relations and juvenile courts, retired justices and judges of such courts, justices of the peace, retired justices of the peace, and judges and magistrates of the federal courts of this state.

(b) For the purposes of this section, a retired judge of a county court, probate court, county court at law, court of domestic relations, or juvenile court or a retired justice of the peace is a person who has an aggregate of at least 15 years of service as judge of any court or courts or as justice of the peace and who has ceased to serve in that capacity. The person is considered as retired in the capacity of last service.

(c) All persons authorized under Subsection (a)(4) of this section to conduct marriage ceremonies are prohibited from discriminating on the basis of race, religion, or national origin against any applicants who are otherwise qualified to be married.

(d) Upon a finding by the State Commission on Judicial Conduct that a judge or justice of any court listed in Subsection (a)(4) of this section has intentionally violated Subsection (c) of this section, the commission may recommend to the supreme court that he or she be removed from office.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1977, 65th Leg., p. 135, ch. 64, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 388, ch. 179, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 1835, ch. 423, § 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 2498, ch. 437, § 1, eff. Aug. 29, 1983.]

§ 1.84. Return of License; Penalty for Violation

(a) The person who conducts the ceremony shall enter on the license the date and county in which it was performed and his or her name as the person who performed the ceremony, subscribe it and return the license to the county clerk who issued it within 30 days after the ceremony is conducted.

(b) A person who violates or fails to comply with any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $200 nor more than $500.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 1.85. Recording of License; Delivery to Licensees

The county clerk shall record the returned license and shall mail the license to the address indicated in the application. On the application form the county clerk shall record the date of the marriage ceremony, the county in which it was conducted, and the name of the person who conducted the ceremony.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 1.86. Duplicate License

(a) On the application and proof of identity of a person whose marriage is recorded in the records of the county clerk, the county clerk shall issue a duplicate marriage license completed with information as contained in the records.

(b) On the application and proof of identity of both persons to whom a marriage license was issued but not recorded as required by Section 1.85 of this code, the county clerk shall issue a duplicate license if each person applying submits to the clerk an affidavit stating:

(1) that the persons to whom the original license was issued were married to each other by a person authorized to conduct marriage ceremonies before the expiration date of the original license;

(2) the name of the person who conducted the ceremony; and

(3) the date on which the marriage ceremony occurred.

[Acts 1975, 64th Leg., p. 621, ch. 254, § 6, eff. Sept. 1, 1975.]

[Sections 1.87 to 1.90 reserved for expansion]

SUBCHAPTER E. MARRIAGE WITHOUT FORMALITIES

§ 1.91. Proof of Certain Informal Marriages

(a) In any judicial, administrative, or other proceeding, the marriage of a man and woman may be proved by evidence that:

(1) a declaration of their marriage has been executed under Section 1.92 of this code; or

(2) they agreed to be married, and after the agreement they lived together in this state as husband and wife and there represented to others that they were married.

(b) In any proceeding in which a marriage is to be proved under Subsection (a)(2) of this section, the agreement of the parties to marry may be inferred if it is proved that they lived together as husband and wife and represented to others that they were married.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 1.92. Declaration and Registration

(a) A declaration of informal marriage shall be executed on a form prescribed by the Bureau of Vital Statistics of the State Department of Health and provided by the county clerk. Each party to the declaration shall provide the information required in the form.

(b) The declaration form shall contain:

(1) a heading entitled "Declaration and Registration of Informal Marriage, _____ County, Texas";

(2) spaces for each party's full name (including the woman's maiden surname), address, date of birth, place of birth (including city, county, and state), and social security number, if any;

(3) a space for indicating the type of document tendered by each party as proof of age and identity;

(4) printed boxes for each party to check "true" or "false" in response to the following statement: "The other party is not related to me as:

(A) an ancestor or descendant, by blood or adoption;

(B) a brother or sister, of the whole or half blood or by adoption; or

(C) a parent's brother or sister of the whole or half blood.";

(5) a printed declaration and oath reading: "I SOLEMNLY SWEAR (OR AFFIRM) THAT WE, THE UNDERSIGNED, ARE MARRIED TO EACH OTHER BY VIRTUE OF THE FOLLOWING FACTS: ON OR ABOUT (DATE) WE AGREED TO BE MARRIED, AND AFTER THAT DATE WE LIVED TOGETHER AS HUSBAND AND WIFE AND IN THIS STATE WE REPRESENTED TO OTHERS THAT WE WERE MARRIED, SINCE THE DATE OF MARRIAGE TO THE OTHER PARTY I HAVE NOT BEEN MARRIED TO ANY OTHER PERSON. THIS DECLARATION IS TRUE AND THE INFORMATION IN IT WHICH I HAVE GIVEN IS CORRECT.";

(6) spaces immediately below the printed declaration and oath for the parties' signatures; and

(7) a certificate of the county clerk that the parties made the declaration and oath and the place and date it was made.

(c) If either party is underage at the time of filing a declaration, the declaration shall have attached an acknowledged consent executed by a parent of each underage person.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1971, 62nd Leg., p. 2508, ch. 826, § 2, eff. June 9, 1971; Acts 1973, 63rd Leg., p. 1601, ch. 577, § 9, eff. Jan. 1, 1974.]

§ 1.93. Proof of Identity and Age

The county clerk shall require proof of the identity and age of each party to the declaration to be established by a certified copy of the party's birth certificate or by some certificate, license, or document issued by this state or another state, the United States, or a foreign government.

[Acts 1973, 63rd Leg., p. 1601, ch. 577, § 10, eff. Jan. 1, 1974.]

§ 1.94. Recording of Declaration

(a) The county clerk shall:

(1) determine that all necessary information is entered in the declaration form and that all necessary documents are submitted to him;

(2) administer the oath to each party to the declaration;

(3) have each party sign the declaration in his presence; and

(4) execute his certificate to the declaration.

(b) The county clerk may not certify or record the declaration if:

(1) either party fails to supply any information, or to provide any document, required by this subchapter;

(2) either party is under 16 years of age and waiver of the age requirement has not been ordered; or

(3) either party checks "false" in response to the statement of relationship to the other party.

(c) On execution of the declaration, the county clerk shall record the declaration and all documents submitted with the declaration or note a summary of them on the declaration form, deliver the original of the declaration to the parties, and send a copy to the Bureau of Vital Statistics.

(d) A declaration recorded as provided in this section is prima facie evidence of the marriage of the parties.

[Acts 1973, 63rd Leg., p. 1601, ch. 577, § 10, eff. Jan. 1, 1974.]

§ 1.95. Violation by County Clerk

A county clerk or a deputy county clerk who violates any provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $200 nor more than $500.

[Acts 1973, 63rd Leg., p. 1601, ch. 577, § 10, eff. Jan. 1, 1974.]

CHAPTER 2. VALIDITY OF MARRIAGE

SUBCHAPTER A. GENERAL PROVISIONS

Sec.
2.01. State Policy.
2.02. Fraud, Mistake, or Illegality in Obtaining License.
2.03. Ceremony Conducted by Unauthorized Person.

SUBCHAPTER B. VOID MARRIAGES

2.21. Consanguinity.
2.22. Marriage During Existence of Prior Marriage.
2.23. Certain Void Marriages Validated.
2.24. Suit to Declare Marriage Void.

SUBCHAPTER C. VOIDABLE MARRIAGES

2.41. Underage.
2.42. Under Influence of Alcohol or Narcotics.
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2.44. Fraud, Duress, Force.
2.45. Mental Incompetency.
2.46. Concealed Divorce.
2.47. Death of Party to Voidable Marriage.

SUBCHAPTER A. GENERAL PROVISIONS

§ 2.01. State Policy

In order to promote the public health and welfare and to provide the necessary records, this code prescribes detailed and specific rules to be followed in establishing the marriage relationship. However, in order to provide stability for those entering into the marriage relationship in good faith and to provide legitimacy and security for the children of the relationship, it is the policy of this state to preserve and uphold each marriage against claims of invalidity unless strong reasons exist for holding it void or voidable. Therefore, every marriage entered into in this state is considered valid unless it is expressly made void by this chapter or unless it is expressly made voidable by this chapter and is annulled as provided by this chapter. When two or more marriages of a person to different spouses are alleged, the most recent marriage is presumed to be valid as against each marriage that precedes it until one who asserts the validity of a prior marriage proves its validity.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 2.02. Fraud, Mistake, or Illegality in Obtaining License

Except as otherwise provided by this chapter, the validity of a marriage is not affected by any fraud, mistake, or illegality that occurred in obtaining the marriage license.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 2.03. Ceremony Conducted by Unauthorized Person

The validity of a marriage is not affected by any lack of authority of the person conducting the marriage ceremony if there was a reasonable appearance of authority by that person and at least one party to the marriage participated in the ceremony in good faith and that party treats the marriage as valid.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

[Sections 2.04 to 2.20 reserved for expansion]

SUBCHAPTER B. VOID MARRIAGES

§ 2.21. Consanguinity

(a) A person may not marry:

(1) an ancestor or descendant, by blood or adoption;

(2) a brother or sister, of the whole or half blood or by adoption;

(3) a parent's brother or sister, of the whole or half blood; or

(4) a son or daughter of a brother or sister of the whole or half blood or by adoption.

(b) A marriage entered into in violation of this section is void.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1975, 64th Leg., p. 1184, ch. 442, § 1, eff. June 19, 1975.]

§ 2.22. Marriage During Existence of Prior Marriage

A marriage is void if either party was previously married and the prior marriage is not dissolved. However, the marriage becomes valid when the prior marriage is dissolved if since that time the parties have lived together as husband and wife and represented themselves to others as being married.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 2.23. Certain Void Marriages Validated

Except for marriages that would have been void under Section 2.21 of this code, all marriages that were entered into before January 1, 1970, in violation of the prohibitions of Article 496, Penal Code of Texas, 1925, are validated from the beginning if the parties continued until January 1, 1970, to live together as husband and wife and to represent themselves to others as being married.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 2.24. Suit to Declare Marriage Void

(a) Either party to a marriage made void by this subchapter may sue to have the marriage declared void, or the marriage may be declared void in any collateral proceeding.

(b) A suit to have a marriage declared void may be maintained in this state only if the purported marriage was contracted in this state or if either party is domiciled in this state.

(c) A suit to have a marriage declared void is a suit in rem, affecting the status of the parties to the purported marriage. Process shall be served as in a suit for divorce.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

[Sections 2.25 to 2.40 reserved for expansion]

SUBCHAPTER C. VOIDABLE MARRIAGES

§ 2.41. Underage

(a) The licensed or informal marriage of a person under 14 years of age, unless a court order has been obtained as provided in Section 1.53 of this code, is voidable and subject to annulment on the petition of a next friend for the benefit of the underage party or on the petition of the parent or the judicially designated managing conservator or guardian (whether an individual, authorized agency, or court) of the person of the underage party. A suit filed under this subsection by a next friend must be brought within 90 days after the 14th birthday of the underage party, or it is barred. A suit by a parent, managing conservator, or guardian of the person may be brought at any time before the party is 14 years of age, but thereafter must be brought within 90 days after the petitioner knew or should have known of the marriage, or it is barred. However, in no case may a suit by a parent, managing conservator, or guardian of the person be brought under this subsection after the underage person has reached 18 years of age.

(b) The licensed or informal marriage of a person 14 years of age or older but under 18 years of age, without parental consent as provided in Section 1.52 or 1.92 of this code or without a court order as provided by Section 1.53 of this code, is voidable and subject to annulment on the petition of a next friend for the benefit of the underage party, or on the petition of the parent or the judicially designated managing conservator or guardian (whether an individual, authorized agency or court) of the person of the underage party. A suit filed under this subsection by a next friend must be brought within 90 days after the date of the marriage, or it is barred. A suit by a parent, managing conservator, or guardian of the person must be brought within 90 days after the date the petitioner knew or should have known of the marriage, or it is barred. However, in no case may a suit by a parent, managing conservator, or guardian of the person be brought under this subsection after the underage person has reached 18 years of age.

(c) In any suit under this section the marriage is voidable at the discretion of the court sitting without a jury. In exercising its discretion, the court shall consider all pertinent facts concerning the welfare of the parties to the marriage, including whether or not the female is pregnant.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1971, 62nd Leg., p. 2507, ch. 826, § 1, eff. June 9, 1971; Acts 1973, 63rd Leg., p. 1602, ch. 577, § 11, eff. Jan. 1, 1974; Acts 1975, 64th Leg., p. 621, ch. 254, § 7, eff. Sept. 1, 1975.]

§ 2.42. Under Influence of Alcohol or Narcotics

On the suit of a party to a marriage, the marriage is voidable and subject to annulment if:

(1) at the time of the marriage the petitioner was under the influence of alcoholic beverages or narcotics and as a result did not have the capacity to consent to the marriage; and

(2) the petitioner has not voluntarily cohabited with the other party to the marriage since the effects of the alcoholic beverages or narcotics ended.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 2.43. Impotency

On the suit of a party to a marriage, the marriage is voidable and subject to annulment if:

(1) either party, for physical or mental reasons, was permanently impotent at the time of the marriage;

(2) the petitioner did not know of the impotency at the time of the marriage; and

(3) the petitioner has not voluntarily cohabited with the other party since learning of the impotency.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 2.44. Fraud, Duress, Force

On the suit of a party to a marriage, the marriage is voidable and subject to annulment if:

(1) the other party used fraud, duress, or force to induce the petitioner to enter into the marriage; and

(2) the petitioner has not voluntarily cohabited with the other party since learning of the fraud or since being released from the duress or force.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 2.45. Mental Incompetency

(a) On the suit of a party to a marriage, or on the suit of the party's guardian or next friend (if the court finds it to be in his best interest to be represented by a guardian or next friend), the marriage is voidable and subject to annulment if:

(1) at the time of the marriage, as a result of a mental disease or defect, the petitioner did not have the mental competency to consent to marriage or to understand the nature of the marriage ceremony; and

(2) since the marriage ceremony, the petitioner has not voluntarily cohabited with the other party during any period when the petitioner possessed the mental competency to recognize the marriage relationship.

(b) On the suit of a party to a marriage, the marriage is voidable and subject to annulment if:

(1) at the time of the marriage, as a result of a mental disease or defect, the other party did not have the mental competency to consent to marriage or to understand the nature of the marriage ceremony;

(2) at the time of the marriage, the petitioner neither knew nor reasonably should have known of the mental disease or defect; and

(3) since the petitioner discovered or reasonably should have discovered the mental disease or defect, the petitioner has not voluntarily cohabited with the other party.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 2.46. Concealed Divorce

(a) On the suit of a party to a marriage, the marriage is voidable and subject to annulment if:

(1) the other party was divorced from a third party within the thirty day period preceding the day of the marriage ceremony;

(2) at the time of the marriage ceremony, the petitioner did not know, and a reasonably prudent person would not have known, of the divorce; and

(3) since the petitioner discovered, or a reasonably prudent person would have discovered, the fact of the divorce, the petitioner has not voluntarily cohabited with the other party.

(b) A suit may not be brought under this section more than one year after the date of the marriage.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1610, ch. 577, § 38, eff. Jan. 1, 1974.]

§ 2.47. Death of Party to Voidable Marriage

A marriage voidable under this subchapter is not subject to challenge in any proceeding instituted after the death of either party.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

CHAPTER 3. DISSOLUTION OF MARRIAGE

SUBCHAPTER A. GROUNDS FOR DIVORCE; DEFENSES

Sec.
3.01. Insupportability.
3.02. Cruelty.
3.03. Adultery.
3.04. Conviction of Felony.
3.05. Abandonment.
3.06. Living Apart.
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SUBCHAPTER B. JURISDICTION AND VENUE; RESIDENCE QUALIFICATIONS

3.21. Residence—General Rule.
3.22. Absence on Public Service.
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3.24. Suit by Nonresident Spouse.
3.25. Suit for Annulment or to Declare a Marriage Void.
3.26. Acquiring Jurisdiction Over Nonresident Respondent.

SUBCHAPTER C. SUIT

SUBCHAPTER D. ENFORCEMENT

SUBCHAPTER A. GROUNDS FOR DIVORCE; DEFENSES

§ 3.01. Insupportability

On the petition of either party to a marriage, a divorce may be decreed without regard to fault if the marriage has become insupportable because of discord or conflict of personalities that destroys the legitimate ends of the marriage relationship and prevents any reasonable expectation of reconciliation.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 3.02. Cruelty

A divorce may be decreed in favor of one spouse if the other spouse is guilty of cruel treatment toward the complaining spouse of a nature that renders further living together insupportable.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 3.03. Adultery

A divorce may be decreed in favor of one spouse if the other spouse has committed adultery.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 3.04. Conviction of Felony

(a) A divorce may be decreed in favor of one spouse if since the marriage the other spouse:

(1) has been convicted of a felony;

(2) has been imprisoned for at least one year in the state penitentiary, a federal penitentiary, or the penitentiary of another state; and

(3) has not been pardoned.

(b) A divorce may not be decreed under this section against a spouse who was convicted on the testimony of the other spouse.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 3.05. Abandonment

A divorce may be decreed in favor of one spouse if the other spouse left the complaining spouse with the intention of abandonment and remained away for at least one year.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 3.06. Living Apart

A divorce may be decreed in favor of either spouse if the spouses have lived apart without cohabitation for at least three years.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 3.07. Confinement in Mental Hospital

A divorce may be decreed in favor of one spouse if at the time the suit is filed:

(1) the other spouse has been confined in a mental hospital, a state mental hospital, or private mental hospital, as defined in Section 4, Texas Mental Health Code, as amended (Article 5547–4, Vernon's Texas Civil Statutes), in this state or another state for at least three years; and

(2) it appears that the spouse's mental disorder is of such a degree and nature that he is not likely to adjust, or that if he adjusts it is probable that he will suffer a relapse.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 3.08. Defenses

(a) The defense of recrimination is abolished.

(b) Condonation is a defense only if the court finds that there is a reasonable expectation of reconciliation.

(c) The defense of adultery is abolished.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1603, ch. 577, § 12, eff. Jan. 1, 1974.]

[Sections 3.09 to 3.20 reserved for expansion]

SUBCHAPTER B. JURISDICTION AND VENUE; RESIDENCE QUALIFICATIONS

§ 3.21. Residence—General Rule

No suit for divorce may be maintained unless at the time suit is filed the petitioner or the respondent has been a domiciliary of this state for the preceding six-month period and a resident of the county in which the suit is filed for the preceding ninety-day period.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1603, ch. 577, § 13, eff. Jan. 1, 1974.]

§ 3.22. Absence on Public Service

For the purpose of Section 3.21 of this code, time spent by a Texas domiciliary in the service of the armed forces or other service of the United States or of this state outside this state or the county of residence of the domiciliary is considered residence in the state and county.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1603, ch. 577, § 14, eff. Jan. 1, 1974.]

§ 3.23. Military Personnel not Previously Residents

A person not previously a resident of this state who is serving in the armed forces of the United States and has been stationed at one or more military installations in this state for at least the last six months and at one or more military installations in a county of this state for at least the last ninety days is considered to have been a domiciliary of this state and a resident of the county for those periods for the purpose of bringing suit for divorce or annulment or to declare a marriage void.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1603, ch. 577, § 15, eff. Jan. 1, 1974.]

§ 3.24. Suit by Nonresident Spouse

If one spouse has been a domiciliary of this state for at least the last six months, a spouse domiciled in another state or nation may sue for divorce in the county where the domiciled spouse is domiciled at the time the petition is filed.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1603, ch. 577, § 16, eff. Jan. 1, 1974.]

§ 3.25. Suit for Annulment or to Declare a Marriage Void

(a) A suit for annulment of a marriage or to declare a marriage void may be maintained in this state only if the parties were married in this state or if either party is domiciled in this state.

(b) A suit for annulment of a marriage or to declare a marriage void is a suit in rem, affecting the status of the parties to the marriage. Process shall be served as in a suit for divorce.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1603, ch. 577, § 17, eff. Jan. 1, 1974.]

§ 3.26. Acquiring Jurisdiction Over Nonresident Respondent

(a) If the petitioner is a resident or a domiciliary of this state at the commencement of a suit for divorce, annulment, or to declare a marriage void, the court may exercise personal jurisdiction over the respondent, or the respondent's personal representative, although the respondent is not a resident or a domiciliary of this state if:

(1) this state is the last marital residence of the petitioner and the respondent and the suit is commenced within two years after the date on which marital residence ended; or

(2) there is any basis consistent with the constitutions of this state and the United States for the exercise of the personal jurisdiction.

(b) A court acquiring jurisdiction under this section also acquires jurisdiction over the respondent in a suit affecting the parent-child relationship.

[Acts 1975, 64th Leg., p. 622, ch. 254, § 8, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 705, ch. 160, § 3, eff. Sept. 1, 1983.]

[Sections 3.27 to 3.50 reserved for expansion]

SUBCHAPTER C. SUIT

§ 3.51. Caption

Pleadings in a divorce or annulment suit shall be entitled, "In the Matter of the Marriage of _____ and _____."

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 3.52. Pleadings

Pleadings of the parties in a suit for divorce or annulment or to declare a marriage void shall contain allegations of the grounds relied on substantially in the language of the statute and without a detailed statement of evidentiary facts. Allegations of grounds for relief, matters of defense, or facts relied on for temporary relief stated in short and plain terms are not subject to special exceptions because of form or sufficiency. All allegations of evidentiary facts shall be stricken from the pleadings on the motion of any party to the suit or by the court on its own motion.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1604, ch. 577, § 18, eff. Jan. 1, 1974; Acts 1981, 67th Leg., p. 2654, ch. 711, § 1, eff. Sept. 1, 1981.]

Section 4 of the 1981 amendatory act provides:

"This Act takes effect September 1, 1981, and applies only to suits for divorce, annulment, or to declare a marriage void filed on or after the effective date of this Act."

§ 3.521. Citation by Publication

(a) Citation in a suit for divorce or annulment or to declare a marriage void may be given by publication as in other civil cases, except that notice shall be published one time only.

(b) The notice shall be sufficient if given in substantially the following form:

"STATE OF TEXAS

To (name of person to be served with citation), and to all whom it may concern (if the name of any person to be served with citation is unknown), Respondent(s),

GREETINGS:

"YOU ARE HEREBY COMMANDED to appear and answer before the Honorable District Court ____ Judicial District, _____ County, Texas, at the Courthouse of said county in _____, Texas, at or before 10 o'clock a. m. of the Monday next after the expiration of 20 days from the date of service of this citation, then and there to answer the petition of _____, Petitioner, filed in said Court on the ____ day of _____, against _____, Respondent(s), and the said suit being number ____ on the docket of said Court, and entitled 'In the Matter of Marriage of _____ and _____,' the nature of which suit is a request to _____ (statement of relief sought).

"The Court has authority in this suit to enter any judgment or decree dissolving the marriage and providing for the division of property which will be binding on you.

"Issued and given under my hand and seal of said Court at _____, Texas, this the ____ day of _____, _____.

. . . . . .

Clerk of the District Court of
_____ County, Texas

By _____, Deputy."

(c) The form authorized in this section and the form authorized by Section 11.09 of this code may be combined in appropriate situations.

(d) Where no parent-child relationship exists, service by publication may be completed by posting the citation at the courthouse door for a period of seven days in the county where the suit is filed.

(e) Where the petitioner or his or her attorney of record shall make oath that no children presently under 18 years of age were born or adopted by the parties and that no appreciable amount of property was accumulated by the parties during the marriage, the court may dispense with the appointment of an attorney ad litem; but, in every such case a statement of the evidence, approved and signed by the judge, shall be filed with the papers of the cause as a part of the record thereof.

[Acts 1975, 64th Leg., p. 622, ch. 254, § 9, eff. Sept. 1, 1975.]

§ 3.53. Answer

In a suit for divorce or annulment or to declare a marriage void, the respondent need not answer upon oath, and the petition shall not be taken as confessed for want of an answer.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1604, ch. 577, § 19, eff. Jan. 1, 1974.]

§ 3.54. Counseling

(a) After a petition for divorce is filed, the court may, in its discretion, direct the parties to counsel with a person or persons named by the court, who shall submit a written report to the court before the hearing on the petition.

(b) In his report, the counselor shall give only his opinion as to whether there exists a reasonable expectation of reconciliation of the parties, and if so, whether further counseling would be beneficial. The sole purpose of the report is to aid the court in determining whether the suit for divorce should be continued pending further counseling, and the report shall not be admitted as evidence in the suit. Copies of the report shall be furnished to the parties.

(c) If the court is of the opinion that there exists a reasonable expectation of the parties' reconciliation, the court may by written order continue the proceedings and direct the parties to any person or persons named by the court for further counseling for a period of time fixed by the court not to exceed 60 days, subject to any terms, conditions, and limitations the court deems desirable. The court shall consider the circumstances of the parties, including the needs of the parties' family, and the availability of counseling services, in making its order. At the expiration of the period of time specified by the court, the counselor to whom the parties were directed shall report to the court whether the parties have complied with the court's order. Thereafter, the court shall proceed as in divorce suits generally.

(d) No person who has counseled parties to a suit for divorce under this section is competent to testify in any action involving the parties or their children. The files, records, and other work-products of the counselor are privileged and confidential for all purposes and may not be admitted as evidence in any action involving the parties or their children.

(e) The expenses of counseling may be taxed as costs against either or both parties.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1604, ch. 577, § 20, eff. Jan. 1, 1974; Acts 1975, 64th Leg., p. 623, ch. 254, § 10, eff. Sept. 1, 1975.]

§ 3.55. Managing Conservatorship and Support of Children

(a) The petition shall state whether or not there are children under 18 years of age born or adopted of the marriage.

(b) If the parties are parents of a child, as defined by Section 11.01 of this code, and the child is not under the continuing jurisdiction of any other court under Section 11.05 of this code, the suit for divorce, annulment, or to declare the marriage void, must include a suit affecting the parent-child relationship under Subtitle A, Title 2, of this code.[1]

(c) If the parties are parents of a child, as defined by Section 11.01 of this code, and the child is under the continuing jurisdiction of another court under Section 11.05 of this code, either party to the suit for divorce, annulment, or to declare the marriage void may move that court for transfer of the suit affecting the parent-child relationship to the court having jurisdiction of the suit or divorce, annulment, or to declare the marriage void. The court with continuing jurisdiction shall then transfer the proceeding to the court with jurisdiction of the suit for divorce, annulment, or to declare the marriage void. Proceedings for transfer under this section shall be governed by the procedures governing transfer under Section 11.06 of this code. On transfer of the proceedings to the court with jurisdiction of the suit for divorce, annulment, or to declare the marriage void, that court shall consolidate the suit affecting the parent-child relationship with the suit for divorce, annulment, or to declare the marriage void.

(d) After transfer of a suit affecting the parent-child relationship as provided in Subsection (c) of this section, or if the parties are parents of a child and no other court has jurisdiction of the child, the court with jurisdiction of the suit for divorce, annulment, or to declare the marriage void has jurisdiction to make orders, decrees, or judgments affecting the parent-child relationship in the same manner that a court with jurisdiction of a suit affecting the parent-child relationship has under Subtitle A, Title 2, of this code, and is subject to the same rules, requirements, and standards set forth in Subtitle A, Title 2, of this code for such suits. On entering its decree or judgment affecting the parent-child relationship, the court has continuing jurisdiction under Section 11.05 of this code, and the decree or judgment shall be treated for all purposes as though it were entered in a suit affecting the parent-child relationship.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1457, ch. 543, § 2, eff. Jan. 1, 1974.]

[1] Section 11.01 et seq.

§ 3.56. Repealed by Acts 1981, 67th Leg., p. 2655, ch. 711, § 3, eff. Sept. 1, 1981

Section 4 of the 1981 repealing act provides:

"This Act takes effect September 1, 1981, and applies only to suits for divorce, annulment, or to declare a marriage void filed on or after the effective date of this Act."

§ 3.57. Transfers and Debts Pending Decree

After a petition for divorce or annulment is filed and until a final decree is entered, if a spouse transfers real or personal community property or incurs a debt that would subject community property to liability, the transfer or debt is void with respect to the other spouse if the transfer was made or the debt incurred with the intent to injure the rights of the other spouse. A transfer or debt is not void if the person dealing with the transferor or debtor spouse did not have notice of the intent to injure the rights of the other spouse. In an action to void any transfer or debt the spouse seeking to void said transfer or debt shall have the burden of proving that the person dealing with the transferor or debtor spouse had notice of the intent to injure the rights of the other spouse.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1979, 66th Leg., p. 421, ch. 193, § 1, eff. Aug. 27, 1979.]

§ 3.58. Temporary Orders

(a) After a petition for divorce or annulment or to declare a marriage void is filed, the court, on the motion of any party, or on the court's own motion, may grant a temporary restraining order ex parte and, in addition, after notice and hearing may issue a temporary injunction for the preservation of the property and the protection of the parties as deemed necessary and equitable, including but not limited to an order prohibiting one or both parties from:

(1) intentionally communicating with the other by telephone or in writing in vulgar, profane, obscene, or indecent language, or in a coarse or offensive manner, with intent to annoy or alarm the other;

(2) threatening the other, by telephone or in writing, to take unlawful action against any person, intending by this action to annoy or alarm the other;

(3) placing one or more telephone calls, anonymously, at an unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication with the intent to annoy or alarm the other;

(4) intentionally, knowingly, or recklessly causing bodily injury to the other, or to a child of either;

(5) threatening the other or a child of either with imminent bodily injury;

(6) intentionally, knowingly, or recklessly destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of the parties, or either of them, with intent to obstruct the authority of the court to order a division of the estate of the parties in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage;

(7) intentionally falsifying any writing or record relating to the property of either of them;

(8) intentionally misrepresenting or refusing to disclose to the other or to the court, on proper request, the existence, amount, or location of any property of the parties, or either of them;

(9) intentionally or knowingly damaging or destroying the tangible property of the parties, or either of them; or

(10) intentionally or knowingly tampering with the tangible property of the parties, or either of them, and causing pecuniary loss or substantial inconvenience to the other.

(b) A temporary restraining order under this subchapter may not:

(1) include a provision the subject of which is any requirement, appointment, award, or other order that is listed in Subsection (c) of this section; or

(2) include a provision that:

(A) excludes a spouse from occupancy of the residence where the party is living;

(B) prohibits a party from the spending of funds for reasonable and necessary living expenses; or

(C) prohibits a party from engaging in acts reasonable and necessary to the conduct of that party's usual business and occupation.

(c) After a petition for divorce or annulment or to declare a marriage void is filed, the court, on the motion of any party or on the court's own motion, may grant a temporary injunction after notice and hearing for the preservation of the property and protection of the parties as deemed necessary and equitable, including but not limited to an order directed to one or both parties:

(1) requiring a sworn inventory and appraisement of all property, both real and personal, owned or claimed by the parties, and a list of all debts and liabilities owed by the parties (the form, manner, and substance of the inventory and appraisal and list of debts and liabilities to be specified by the court);

(2) requiring the support of either of the spouses;

(3) requiring the production of books, papers, documents, and tangible things by any party;

(4) ordering payment of reasonable attorney's fees and expenses;

(5) appointing a receiver for the preservation and protection of the property of the parties;

(6) awarding one spouse exclusive occupancy of the residence during the pendency of the case;

(7) prohibiting the parties, or either of them, from the spending of funds beyond what the court determines to be for reasonable and necessary living expenses; or

(8) awarding one spouse exclusive control of a party's usual business or occupation.

(d) A temporary restraining order or a temporary injunction issued under this section may be granted without the necessity of an affidavit or a verified pleading stating specific facts showing that immediate and irreparable injury, loss, or damage will result before notice can be served and a hearing can be held. A temporary restraining order or temporary injunction granted under this section need not:

(1) define the injury or state why it is irreparable; or

(2) state why the order was granted without notice.

(e) In a suit for divorce, annulment, or to declare a marriage void, the court may dispense with the necessity of a bond as between the spouses when issuing temporary orders.

(f) The violation of any order issued under this section is punishable as contempt.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1605, ch. 577, § 22, eff. Jan. 1, 1974; Acts 1981, 67th Leg., p. 2654, ch. 711, § 2, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 2346, ch. 424, § 1, eff. Sept. 1, 1983.]

Section 4 of the 1981 amendatory act provides:

"This Act takes effect September 1, 1981, and applies only to suits for divorce, annulment, or to declare a marriage void filed on or after the effective date of this Act."

§ 3.581. Protective Orders

(a) On the motion of any party to a suit for divorce or annulment or to declare a marriage void, and on a showing that a party to the suit has committed family violence as defined by Section 71.01 of this code, the court may issue a protective order as provided by Subsection (b) of Section 71.11 of this code.

(b) An order may be made under this section only after notice to the party alleged to have committed family violence and a hearing.

(c) An order made under this section is valid until the order is vacated by the court, the suit is dis-

missed, or the decree in the suit becomes final, whichever event occurs the earliest.

[Acts 1983, 68th Leg., p. 4046, ch. 631, § 1, eff. Sept. 1, 1983.]

§ 3.59. Temporary Support

After a petition for divorce or annulment is filed, the judge, after due notice may order payments for the support of the wife, or for the support of the husband until a final decree is entered.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1979, 66th Leg., p. 421, ch. 193, § 2, eff. Aug. 27, 1979.]

§ 3.60. Waiting Period

A divorce shall not be granted until at least 60 days have elapsed since the day the suit was filed. However, a decree entered in violation of this section is not subject to collateral attack.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 3.61. Jury

In a suit for divorce or annulment or to declare a marriage void, either party, except as provided in Section 2.41 of this code, may demand a jury trial.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1975, 64th Leg., p. 624, ch. 254, § 11, eff. Sept. 1, 1975.]

§ 3.62. Testimony of Husband or Wife

In all such suits and proceedings the husband and wife shall be competent witnesses for and against each other, but neither party shall be compelled to testify as to any matter that will criminate himself or herself; and where the husband or wife testifies, the court or jury trying the case shall determine the credibility of such witness and the weight to be given such testimony.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 3.63. Division of Property

(a) In a decree of divorce or annulment the court shall order a division of the estate of the parties in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage.

(b) In a decree of divorce or annulment the court shall also order a division of the following real and personal property, wherever situated, in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage:

(1) property that was acquired by either spouse while domiciled elsewhere and that would have been community property if the spouse who acquired the property had been domiciled in this state at the time of the acquisition; or

(2) property that was acquired by either spouse in exchange for real or personal property, and that would have been community property if the spouse who acquired the property so exchanged had been domiciled in this state at the time of its acquisition.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1981, 67th Leg., p. 2656, ch. 712, § 1, eff. Sept. 1, 1981.]

Section 3 of the 1981 amendatory act provides:

"This Act takes effect September 1, 1981, and applies only to suits for divorce or annulment in which a hearing on the issue of divorce or annulment has not been held before that date."

§ 3.631. Agreement Incident to Divorce or Annulment

(a) To promote amicable settlement of disputes on the divorce or annulment of a marriage, the parties may enter into a written agreement concerning the division of all property and liabilities of the parties and maintenance of either of them. The agreement may be revised or repudiated prior to rendition of the divorce or annulment unless it is binding under some other rule of law.

(b) In a proceeding for divorce or annulment, the terms of the agreement are binding on the court unless it finds that the agreement is not just and right. If the court finds the agreement is not just and right, the court may request the parties to submit a revised agreement.

(c) If the court approves the agreement, the court may set forth the agreement in full or incorporate it by reference in the decree of divorce or annulment.

[Acts 1981, 67th Leg., p. 2656, ch. 712, § 2, eff. Sept. 1, 1981.]

Section 3 of the 1981 Act provides:

"This Act takes effect September 1, 1981, and applies only to suits for divorce or annulment in which a hearing on the issue of divorce or annulment has not been held before that date."

§ 3.64. Change of Name

In a decree for divorce or annulment, the court for good cause shown may change the name of either party specifically requesting the change. A change of name does not release a person from any liability incurred in a previous name or defeat any right which the person held in a previous name.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1605, ch. 577, § 23, eff. Jan. 1, 1974.]

§ 3.65. Costs

In a suit for divorce or annulment or to declare a marriage void, the court may award costs to any party as it deems reasonable. However, costs may

not be adjudged against a party against whom a divorce is granted under Section 3.07 of this code.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1605, ch. 577, § 24, eff. Jan. 1, 1974.]

§ 3.66. Remarriage

Neither party to a divorce may marry a third party for a period of thirty days immediately following the date the divorce is decreed, but the parties divorced may marry each other at any time.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1605, ch. 577, § 24, eff. Jan. 1, 1974.]

SUBCHAPTER D. ENFORCEMENT

§ 3.70. Procedure to Enforce Decree of Divorce or Annulment

(a) A court order or the portion of a decree of divorce or annulment providing for a division of property under Section 3.63 of this code may be enforced by the filing of a motion as provided by this subchapter in the court that rendered the decree by any party affected by the order or decree.

(b) Except as otherwise provided in this code, a motion to enforce shall be governed by the Texas Rules of Civil Procedure applicable to the filing of an original lawsuit. Each party whose rights, privileges, duties, or powers may be affected by the motion is entitled to receive notice by citation and shall be commanded to appear by filing a written answer. Thereafter, the proceedings shall be as in civil cases generally.

(c) After rendition of a decree of divorce or annulment, the court retains the power to enforce the property division made under Section 3.63 of this code. A motion to enforce the division of tangible personal property in existence at the time of the decree must be filed within a period of two years after the decree was signed or becomes final after appeal, whichever is the later, or the suit is barred. A motion to enforce the division of future property not in existence at the time of the original decree must be filed within a period of two years after the right to the property matures or accrues or after the decree becomes final, whichever is the later, or the suit is barred.

(d) The procedures and limitations provided by this subchapter do not apply to existing property not divided on divorce and thereby held by the ex-spouses as tenants in common. A suit for partition of that property is governed by the rules applicable to civil cases generally.

(e) Neither party may demand a jury trial if the procedures to enforce a decree provided by this subchapter are invoked.

[Acts 1983, 68th Leg., p. 2350, ch. 424, § 2, eff. Sept. 1, 1983.]

Section 13 of the 1983 Act provides:

"(a) This Act takes effect September 1, 1983.

(b) Subchapter D of Chapter 3, Family Code, as added by this Act applies to the enforcement of a decree of divorce or annulment made by a Texas court before or after the effective date of this Act."

§ 3.71. Enforcement of Division of Property

(a) Except as provided by this subchapter and by the Texas Rules of Civil Procedure, a court may not amend, modify, alter, or change the division of property made or approved in the decree of divorce or annulment. Further orders may be entered to enforce the division, but these orders shall be limited to orders in aid of or in clarification of the prior order. The court may specify more precisely the manner of effecting the property division previously made if the substantive division of property is not altered or changed. An order of enforcement does not alter or affect the finality of the decree of divorce or annulment being enforced.

(b) An order under this section that amends, modifies, alters, or changes the actual, substantive division of property made or approved in a final decree of divorce or annulment is beyond the power of the divorce court to enter and is unenforceable.

(c) The power of the court to enter further orders to aid or clarify the property division is abated during the pendency of any appellate proceeding.

[Acts 1983, 68th Leg., p. 2350, ch. 424, § 2, eff. Sept. 1, 1983.]

§ 3.72. Clarification Order

(a) On the motion of either party or on the court's own motion, the court may issue a clarifying order before a motion for contempt is made or heard, in conjunction with a motion for contempt, or on denial of a motion for contempt.

(b) On a finding by the court that the original form of the division of property is not specific enough to be enforceable by contempt, the court may issue a clarifying order setting forth specific terms to enforce compliance with the original division of property.

(c) A clarifying order may not be given retroactive effect. A reasonable time shall be provided for compliance before the clarifying order may be enforced by contempt or in another manner.

[Acts 1983, 68th Leg., p. 2350, ch. 424, § 2, eff. Sept. 1, 1983.]

§ 3.73. Delivery of Property

To enforce the division of property made in a suit for divorce or annulment, the court may make an order to deliver the specific existing property awarded, whether or not of especial value, including an award of an existing sum of money or its equivalent.

[Acts 1983, 68th Leg., p. 2350, ch. 424, § 2, eff. Sept. 1, 1983.]

§ 3.74. Reduction to Money Judgment

(a) If a party fails to comply with a decree of divorce or annulment and delivery of property awarded in the decree is no longer an adequate remedy, the court may enter a money judgment for the damages caused by that failure to comply.

(b) On the motion of any party who did not receive payments of money as awarded in a decree of divorce or annulment, the court may enter judgment against a defaulting party for the amount of unpaid payments to which the movant is entitled. The remedy of a reduction to money judgment is in addition to all other remedies provided by law.

(c) A money judgment rendered under this section may be enforced by any means available for the enforcement of a judgment for debt.

[Acts 1983, 68th Leg., p. 2350, ch. 424, § 2, eff. Sept. 1, 1983.]

§ 3.75. Right to Future Property

An award of the right to receive installment payments or a lump-sum payment due on the maturation of an existing vested or nonvested right to be paid in the future may be enforced by the remedies provided by this subchapter. The subsequent actual receipt by the nonowning party or property awarded to the owner creates a fiduciary obligation in favor of the owner and imposes a constructive trust on the property for the benefit of the owner.

[Acts 1983, 68th Leg., p. 2350, ch. 424, § 2, eff. Sept. 1, 1983.]

§ 3.76. Contempt

(a) An order requiring delivery of specific property, or an award of a right to future property, may be enforced by contempt.

(b) An award of a sum of money in a decree of divorce or annulment, payable in a lump sum or in future installment payments in the nature of debt, other than that in existence at the time of the decree or as provided in Section 3.75 of this code, is not enforceable by contempt.

(c) This subchapter does not detract from or limit the general power of a court to enforce its orders by appropriate means.

[Acts 1983, 68th Leg., p. 2350, ch. 424, § 2, eff. Sept. 1, 1983.]

§ 3.77. Costs

In any proceeding to enforce a property division as provided by this subchapter, the court may award costs as in other civil cases. Reasonable attorney's fees may be taxed as costs in any proceeding under this subchapter, and may be ordered paid directly to the attorney, who may enforce the order for fees in his own name by any means available for the enforcement of a judgment for debt.

[Acts 1983, 68th Leg., p. 2350, ch. 424, § 2, eff. Sept. 1, 1983.]

CHAPTER 4. RIGHTS, DUTIES, POWERS, AND LIABILITIES OF SPOUSES

Sec.
4.01. Persons Married Elsewhere.
4.02. Duty to Support.
4.03. Capacity of Spouses.
4.04. Joinder in Civil Suits.
4.05. Criminal Conversation not Authorized.

§ 4.01. Persons Married Elsewhere

The law of this state applies to persons married elsewhere who are domiciled in this state.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 4.02. Duty to Support

Each spouse has the duty to support the other spouse, and each parent has the duty to support his or her minor child. A spouse or parent who fails to discharge the duty of support is liable to any person who provides necessaries to those to whom support is owed.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1979, 66th Leg., p. 421, ch. 193, § 3, eff. Aug. 27, 1979.]

§ 4.03. Capacity of Spouses

Except as expressly provided by statute or by the constitution, every person who has been married in accordance with the law of this state, regardless of age, has the power and capacity of an adult, including the capacity to contract.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 4.04. Joinder in Civil Suits

(a) A spouse may sue and be sued without the joinder of the other spouse.

(b) When claims or liabilities are joint and several, the spouses may be joined under the rules relating to joinder of parties generally.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 4.05. Criminal Conversation not Authorized

A right of action by one spouse against a third party for criminal conversation is not authorized in this state.

[Acts 1975, 64th Leg., p. 1942, ch. 637, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 422, ch. 193, § 4, eff. Aug. 27, 1979.]

Section 2 of the 1975 Act provided:

"This Act does not apply to litigation pending before the effective date of this Act."

SUBTITLE B. PROPERTY RIGHTS AND LIABILITIES

CHAPTER 5. MARITAL PROPERTY

SUBCHAPTER A. SEPARATE AND COMMUNITY PROPERTY

Sec.
5.01. Marital Property Characterized.
5.02. Presumption.
5.03. Recordation of Separate Property.
5.04. Gifts Between Spouses.

SUBCHAPTER B. MANAGEMENT, CONTROL AND DISPOSITION OF MARITAL PROPERTY

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5.22. Community Property: General Rules.
5.23. Earnings of Unemancipated Child.
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5.86. Remedies and Powers Cumulative.
5.87. Community Homestead: Spouse Missing on Public Service; Sale Without Joinder.

SUBCHAPTER A. SEPARATE AND COMMUNITY PROPERTY

§ 5.01. Marital Property Characterized

(a) A spouse's separate property consists of:

(1) the property owned or claimed by the spouse before marriage;

(2) the property acquired by the spouse during marriage by gift, devise, or descent; and

(3) the recovery for personal injuries sustained by the spouse during marriage, except any recovery for loss of earning capacity during marriage.

(b) Community property consists of the property, other than separate property, acquired by either spouse during marriage.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 5.02. Presumption

Property possessed by either spouse during or on dissolution of marriage is presumed to be community property.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 5.03. Recordation of Separate Property

A subscribed and acknowledged schedule of a spouse's separate property may be recorded in the deed records of the county in which the parties, or one of them, reside and in the county or counties in which the real property is located. As to real property, a schedule of a spouse's separate property is not constructive notice to a good faith purchaser for value or a creditor without actual notice unless the instrument is acknowledged and recorded in the deed records of the county in which the real property is located.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1605, ch. 577, § 25, eff. Jan. 1, 1974.]

§ 5.04. Gifts Between Spouses

If one spouse makes a gift of property to the other, the gift is presumed to include all the income and property which may arise from that property.

[Acts 1981, 67th Leg., p. 2964, ch. 782, § 1, eff. Sept. 1, 1981.]

[Sections 5.05 to 5.20 reserved for expansion]

SUBCHAPTER B. MANAGEMENT, CONTROL AND DISPOSITION OF MARITAL PROPERTY

§ 5.21. Separate Property

Each spouse has the sole management, control, and disposition of his or her separate property.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 5.22. Community Property: General Rules

(a) During marriage, each spouse has the sole management, control, and disposition of the community property that he or she would have owned if single, including but not limited to:

(1) personal earnings;

(2) revenue from separate property;

(3) recoveries for personal injuries; and

(4) the increase and mutations of, and the revenue from, all property subject to his or her sole management, control, and disposition.

(b) If community property subject to the sole management, control, and disposition of one spouse is mixed or combined with community property subject to the sole management, control, and disposition of the other spouse, then the mixed or combined community property is subject to the joint management, control, and disposition of the spouses, unless the spouses provide otherwise by power of attorney in writing or other agreement.

(c) Except as provided in Subsection (a) of this section, the community property is subject to the joint management, control, and disposition of the husband and wife, unless the spouses provide otherwise by power of attorney in writing or other agreement.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1606, ch. 577, § 26, eff. Jan. 1, 1974.]

§ 5.23. Earnings of Unemancipated Child

During the marriage of the parents of an unemancipated minor child when a managing conservator of the child has not been appointed, the earnings of the child are subject to the joint management, control, and disposition of the parents of the child, unless otherwise provided by agreement of the parents or by judicial order.

[Acts 1979, 66th Leg., p. 422, ch. 193, § 5, eff. Aug. 27, 1979.]

Former § 5.23 was repealed by Acts 1975, 64th Leg., p. 624, ch. 254, § 12, eff. Sept. 1, 1975.

§ 5.24. Protection of Third Persons

(a) During marriage, property is presumed to be subject to the sole management, control, and disposition of a spouse if it is held in his or her name, as shown by muniment, contract, deposit of funds, or other evidence of ownership, or if it is in his or her possession and is not subject to such evidence of ownership.

(b) A third person dealing with a spouse is entitled to rely (as against the other spouse or anyone claiming from that spouse) on that spouse's authority to deal with the property if:

(1) the property is presumed to be subject to the sole management, control, and disposition of the spouse; and

(2) the person dealing with the spouse:

(A) is not a party to a fraud upon the other spouse or another person; and

(B) does not have actual or constructive notice of the spouse's lack of authority.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1606, ch. 577, § 27, eff. Jan. 1, 1974.]

§ 5.25. Unusual Circumstances

(a) If (1) a spouse is unable to manage, control, or dispose of the community property subject to his or her sole or joint management, control, and disposition, (2) a spouse disappears and his or her location remains unknown to the other spouse, except under circumstances in which Section 5.26 of this code is applicable, (3) a spouse permanently abandons the other, or (4) the spouses are permanently separated, then not less than 60 days thereafter the capable spouse, or the remaining spouse, or the abandoned spouse, or either spouse in the case of permanent separation, may file a sworn petition stating the facts that make it desirable for the petitioning spouse to manage, control, and dispose of community property (described or defined in the petition) that would otherwise be subject to the sole or joint management, control, and disposition of the other.

(b) The petition shall be filed in a district court of the county in which the petitioner resided at the time the incapacity or separation began, or the abandonment or disappearance occurred. If both spouses are nonresidents of the state at that time, the petition shall be filed in the district court of any county in which any part of the described or defined community property is located.

(c) The court may appoint an attorney for the suit for the respondent and shall award a reasonable fee for the attorney's services as a part of the costs of the suit.

(d) A notice stating that the petition has been filed and specifying the date of the hearing, accompanied by a copy of the petition, shall be issued and served on the attorney for the suit, if one is appointed, or, if an attorney is not appointed, on the respondent as in other cases.

(e) If the residence of the respondent is unknown, notice shall be published in a newspaper of general circulation published in the county in which the petition was filed. If that county has no newspaper of general circulation, notice shall be published in a newspaper of general circulation in an adjacent county or in the nearest county in which a newspaper of general circulation is published. The notice shall be published once a week for two consecutive weeks before the hearing, but the first publication shall not be less than 20 days before the date set for the hearing.

(f) After hearing the evidence, the court, on terms it deems just and equitable, shall enter an order describing or defining the community property at issue that will be subject to the management, control, and disposition of each spouse during marriage. The court may impose any conditions and restrictions it deems necessary to protect the rights of the respondent, require a bond conditioned on the faithful administration of the property, and require payment of all or a portion of the proceeds of sale of the property to the registry of the court, to be disbursed in accordance with the court's further directions.

(g) The jurisdiction of the court is continuing, and on motion of either spouse, after notice has been given in the same manner that notice is given under Subsection (d) or (e) of this section, the court shall amend or vacate the original order if:

(1) the incapable spouse's capacity is restored;

(2) the spouse who disappeared reappears; or

(3) the abandonment or permanent separation ends.

(h) An order authorized by Subsection (f) of this section affecting real property is not constructive notice to a good faith purchaser for value or a creditor without actual notice unless the order is recorded in the deed records of the county in which the real property is located.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1606, ch. 577, § 28, eff. Jan. 1, 1974.]

§ 5.26. Spouse Missing on Public Service

(a) If a spouse is reported by an executive department of the United States to be a prisoner of war or missing on the public service of the United States then not less than six months thereafter the spouse of the prisoner of war or missing person may file a sworn petition stating the facts that make it desirable for the petitioner to manage, control, and dispose of the community property (described or defined in the petition) that would otherwise be subject to the sole or joint management, control, and disposition of the other.

(b) The petition shall be filed in the district court of the county in which the petitioner resided at the time the report was made. If both spouses were nonresidents of the state at that time, the petition shall be filed in the district court of any county in which any part of the described or defined property is located.

(c) The court shall appoint an attorney for the suit for the respondent and shall allow him a reasonable fee for his services to be taxed as a part of the costs.

(d) A notice stating that the petition has been filed and specifying the date of the hearing, accompanied by a copy of the petition, shall be issued and served on the attorney representing the respondent as in other cases.

(e) After hearing the evidence, the court, on terms it deems just and equitable, shall enter an order describing or defining the community property at issue that will be subject to the management, control, and disposition of each spouse during marriage. The court may impose any conditions and restrictions it deems necessary to protect the rights of the respondent, require a bond conditioned on the faithful administration of the property, and require payment of all or a portion of the proceeds of sale of the property to the registry of the court, to be disbursed in accordance with the court's further directions.

(f) The jurisdiction of the court is continuing, and on motion of either spouse, after notice stating that the motion has been filed and specifying the date of the hearing, accompanied by a copy of the motion, has been issued and served on the respondent as in other cases, the court shall amend or vacate the original order if the spouse who was a prisoner of war or missing returns.

(g) An order authorized by Subsection (e) of this section affecting real property is not constructive notice to a good faith purchaser for value or a creditor without actual notice unless the order is recorded in the deed records of the county in which the real property is located.

[Acts 1971, 62nd Leg., p. 2712, ch. 884, § 1, eff. June 10, 1971. Amended by Acts 1973, 63rd Leg., p. 1607, ch. 577, § 29, eff. Jan. 1, 1974.]

§ 5.27. Remedies Cumulative

The remedies provided in Sections 5.25 and 5.26 of this code are cumulative of other rights, powers, and remedies afforded spouses by law.

[Acts 1973, 63rd Leg., p. 1608, ch. 577, § 30, eff. Jan. 1, 1974.]

[Sections 5.28 to 5.40 reserved for expansion]

SUBCHAPTER C. PROPERTY AGREEMENTS

§ 5.41. Agreement in Contemplation of Marriage

(a) Before marriage, persons intending to marry may enter into a marital property agreement concerning their property then existing or to be acquired, as they may desire.

(b) A minor capable of marrying but not otherwise capable of entering into a binding agreement may enter into a marital property agreement with the subscribed, written consent of the guardian of the minor's estate and with the approval of the probate court after the application, notice, and hearing required in the Probate Code for the sale of a minor's real estate, and if there be no guardian of

the minor's estate, with the subscribed, written consent of the minor's managing conservator.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1608, ch. 577, § 31, eff. Jan. 1, 1974; Acts 1981, 67th Leg., p. 2964, ch. 782, § 2, eff. Sept. 1, 1981.]

§ 5.42. Partition or Exchange of Community Property

At any time, the spouses may partition or exchange between themselves any part of their community property, then existing or to be acquired, as they may desire. Property or a property interest transferred to a spouse by a partition or exchange agreement becomes his or her separate property.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1608, ch. 577, § 32, eff. Jan. 1, 1974; Acts 1981, 67th Leg., p. 2964, ch. 782, § 2, eff. Sept. 1, 1981.]

§ 5.43. Agreements Between Spouses Concerning Income or Property Derived From Separate Property

At any time, the spouses may agree that the income or property arising from the separate property then owned by one of them, or which may thereafter be acquired, shall be the separate property of the owner.

[Acts 1981, 67th Leg., p. 2964, ch. 782, § 2, eff. Sept. 1, 1981.]

§ 5.44. Formalities of Agreements

Each agreement, partition, or exchange agreement made under this subchapter must be in writing and subscribed by all parties.

[Acts 1981, 67th Leg., p. 2964, ch. 782, § 2, eff. Sept. 1, 1981.]

§ 5.45. Marital Agreements: Burden of Proof

In any proceeding in which the validity of a provision of an agreement, partition, or exchange agreement made under this subchapter is in issue as against a spouse or a person claiming from a spouse, the burden of showing the validity of the provision is on the party who asserts it. The proponent of the agreement, partition, or exchange agreement or any person claiming under the proponent has the burden to prove by clear and convincing evidence that the party against whom enforcement of the agreement is sought gave informed consent and that the agreement was not procured by fraud, duress, or overreaching.

[Acts 1981, 67th Leg., p. 2964, ch. 782, § 2, eff. Sept. 1, 1981.]

§ 5.46. Marital Agreements: Rights of Creditors, Recordation

(a) A provision of an agreement, partition, or exchange agreement made under this subchapter is void with respect to rights of a preexisting creditor whose rights are intended to be defrauded by it.

(b) An agreement, partition, or exchange agreement made under this subchapter may be recorded in the deed records of the county in which the parties, or one of them, reside and in the county or counties in which the real property affected or to be affected is located. As to real property, an agreement, partition, or exchange agreement made under this subchapter is not constructive notice to a good faith purchaser for value or a creditor without actual notice unless the instrument is acknowledged and recorded in the county in which the real property is located.

[Acts 1981, 67th Leg., p. 2964, ch. 782, § 2, eff. Sept. 1, 1981.]

[Sections 5.47 to 5.60 reserved for expansion]

SUBCHAPTER D. MARITAL PROPERTY LIABILITIES

§ 5.61. Rules of Marital Property Liability

(a) A spouse's separate property is not subject to liabilities of the other spouse unless both spouses are liable by other rules of law.

(b) Unless both spouses are liable by other rules of law, the community property subject to a spouse's sole management, control, and disposition is not subject to:

(1) any liabilities that the other spouse incurred before marriage; or

(2) any nontortious liabilities that the other spouse incurs during marriage.

(c) The community property subject to a spouse's sole or joint management, control, and disposition is subject to the liabilities incurred by him or her before or during marriage.

(d) All the community property is subject to tortious liability of either spouse incurred during marriage.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 5.62. Order in Which Property is Subject to Execution

(a) A judge may determine, as he deems just and equitable, the order in which particular separate or community property will be subject to execution and sale to satisfy a judgment, if the property subject to liability for a judgment includes any combination of:

(1) a spouse's separate property;

(2) community property subject to a spouse's sole management, control, and disposition;

(3) community property subject to the other spouse's sole management, control, and disposition; and

(4) community property subject to the spouses' joint management, control, and disposition.

(b) In determining the order in which particular property will be subject to execution and sale, the judge shall consider the facts surrounding the transaction or occurrence upon which the suit is based.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

[Sections 5.63 to 5.80 reserved for expansion]

SUBCHAPTER E. HOMESTEAD RIGHTS

§ 5.81. Sale, Conveyance, or Encumbrance of Homestead

Whether the homestead is the separate property of either spouse or community property, neither spouse may sell, convey, or encumber it without the joinder of the other spouse except as provided in Section 5.82, 5.83, 5.84, or 5.85 of this code or by other rules of law.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 5.82. Separate Homestead: Incompetent Spouse; Sale Without Joinder

If the homestead is the separate property of a spouse and the other spouse has been judicially declared incompetent, the owner may sell, convey, or encumber it without the joinder of the other spouse.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 5.83. Separate Homestead: Unusual Circumstances; Sale Without Joinder

(a) If the homestead is the separate property of a spouse and the other spouse (1) is incompetent (whether judicially declared incompetent or not), (2) disappears and his or her location remains unknown to the owner, (3) permanently abandons the homestead and the owner, or (4) permanently abandons the homestead and the spouses are permanently separated, then not less than 60 days thereafter the owner may file a sworn petition giving a description of the property and stating the facts that make it desirable for the owner to sell, convey, or encumber the homestead without the joinder of the other spouse.

(b) The petition shall be filed in a district court of the county in which any portion of the property is located. The court may appoint an attorney for the suit for the respondent and shall award a reasonable fee for his services as a part of the costs of the suit. Notice shall be issued and served in the manner provided in Subsection (d) or (e) of Section 5.25 of this code.

(c) After hearing the evidence, the court shall enter an order it deems just and equitable with respect to sale, conveyance, or encumbrance of the homestead.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1609, ch. 577, § 33, eff. Jan. 1, 1974.]

§ 5.831. Separate Homestead: Spouse Missing on Public Service; Sale Without Joinder

(a) If the homestead is the separate property of a spouse and the other spouse is reported by an executive department of the United States to be a prisoner of war or missing on public service of the United States, not less than six months thereafter the owner may file a sworn petition giving a description of the property and stating the facts that make it desirable for the owner to sell, convey, or encumber the homestead without the joinder of the other spouse.

(b) The petition shall be filed in a district court of the county in which any portion of the property is located. The court shall appoint an attorney for the suit for the respondent and shall award a reasonable fee for the attorney's service as a part of costs of the suit. Notice shall be issued and served in the manner provided in Subsection (d) of Section 5.26 of this code.

(c) After hearing the evidence, the court shall enter an order it deems just and equitable with respect to sale, conveyance, or encumbrance of the homestead.

[Acts 1973, 63rd Leg., p. 1609, ch. 577, § 34, eff. Jan. 1, 1974.]

§ 5.84. Community Homestead: Incompetent Spouse; Sale Without Joinder

If the homestead is the community property of the spouses and one spouse has been judicially declared incompetent, the competent spouse may sell, convey, or encumber the homestead without the joinder of the other spouse.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970.]

§ 5.85. Community Homestead: Unusual Circumstances; Sale Without Joinder

(a) If the homestead is the community property of the spouses and if (1) a spouse is incompetent (whether judicially declared incompetent or not), (2) a spouse disappears and his or her location remains unknown to the other spouse, (3) a spouse permanently abandons the homestead and the other spouse, or (4) a spouse permanently abandons the homestead and the spouses are permanently separated, not less than 60 days thereafter the competent spouse, the remaining spouse, the abandoned spouse, or the spouse who has not abandoned the homestead in a case of permanent separation, who

desires to sell, convey, or encumber the community homestead of the spouses, may file a sworn petition giving a description of the property and stating the facts that make it desirable for the petitioner to sell, convey, or encumber the homestead without the joinder of the other spouse.

(b) The petition shall be filed in a district court of the county in which any portion of the property is located. The court may appoint an attorney for the suit for the respondent and shall award a reasonable fee for the attorney's service as a part of costs of the suit. Notice shall be issued and served in the manner provided in Subsection (d) or (e) of Section 5.25 of this code.

(c) After hearing the evidence, the court, on terms it deems just and equitable, shall enter an order describing or defining the community property at issue that will be subject to the management, control, and disposition of each spouse during marriage. The court may impose any conditions and restrictions it deems necessary to protect the rights of the respondent, require a bond conditioned on the faithful administration of the property, and require payment of all or a portion of the proceeds of sale of the property to the registry of the court to be disbursed in accordance with the court's further directions.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1609, ch. 577, § 35, eff. Jan. 1, 1974.]

§ 5.86. Remedies and Powers Cumulative

The remedies provided by Sections 5.83, 5.831, 5.85, and 5.87 of this code, and the powers of a spouse under Sections 5.82 and 5.84 of this code, are cumulative of the other rights, powers, and remedies afforded the spouses by law.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 1, eff. Jan. 1, 1970. Amended by Acts 1973, 63rd Leg., p. 1610, ch. 577, § 36, eff. Jan. 1, 1974.]

§ 5.87. Community Homestead: Spouse Missing on Public Service; Sale Without Joinder

(a) If the homestead is the community property of the spouses and if a spouse is reported by an executive department of the United States to be a prisoner of war or missing on public service of the United States, not less than six months thereafter the spouse of the prisoner of war or missing person, who desires to sell, convey, or encumber the community homestead of the spouses, may file a sworn petition giving a description of the property and stating the facts that make it desirable for the petitioning spouse to sell, convey, or encumber the homestead without the joinder of the other spouse.

(b) The petition shall be filed in a district court of the county in which any portion of the property is located. The court shall appoint an attorney for the suit for the respondent, and shall award a reasonable fee for the attorney's service as a part of the costs of the suit. Notice shall be issued and served in the manner provided in Subsection (d) of Section 5.26 of this code.

(c) After hearing the evidence, the court shall enter an order granting relief if it appears necessary or advisable, and on terms the court deems advisable. The court may impose any conditions and restrictions it deems necessary to protect the rights of the respondent, may require a bond conditioned on the faithful administration of the property, or may require payment of all or a portion of the proceeds of sale of the property to the registry of the court to be disbursed in accordance with the court's further directions.

[Acts 1971, 62nd Leg., p. 2712, ch. 884, § 2, eff. June 10, 1971. Amended by Acts 1973, 63rd Leg., p. 1610, ch. 577, § 37, eff. Jan. 1, 1974.]

TITLE 2. PARENT AND CHILD

Enactment

Title 2 of the Texas Family Code was added by Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, effective January 1, 1974. Section 4 thereof provides:

"(a) This Act takes effect on January 1, 1974, and governs all proceedings, orders, judgments, and decrees in suits and actions brought after it takes effect, and also all further proceedings in actions then pending, except to the extent that in the opinion of the court its application in an action pending when this Act takes effect would not be feasible or would work injustice. All things properly done under any previously existing rule or statute prior to the taking effect of this Act shall be treated as valid.

"(b) Any action or suit commenced after January 1, 1974, that has as its object the modification of an order, judgment, or decree entered prior to January 1, 1974, but which under this Act would be a suit affecting the parent-child relationship, is governed by the provisions of this Act, and shall be treated as the commencement of a suit affecting the parent-child relationship in which no court has continuing exclusive jurisdiction."

SUBTITLE A. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

CHAPTER 11. GENERAL PROVISIONS

SUBCHAPTER A. DEFINITIONS AND GENERAL PROCEDURES

Sec.

Sec.

SUBCHAPTER B. UNIFORM CHILD CUSTODY JURISDICTION ACT

SUBCHAPTER A. DEFINITIONS AND GENERAL PROCEDURES

§ 11.01. Definitions

As used in this subtitle and Subtitle C of this title,[1] unless the context requires a different definition:

(1) "Child" or "minor" means a person under 18 years of age who is not and has not been married or who has not had his disabilities of minority removed for general purposes. "Adult" means any other person.

(2) "Court" means the district court, court of domestic relations, juvenile court having the jurisdiction of a district court, or other court expressly given jurisdiction of a suit under this subtitle.

(3) "Parent" means the mother, a man as to whom the child is legitimate, or an adoptive mother or father, but does not include a parent as to whom the parent-child relationship has been terminated.

(4) "Parent-child relationship" means the rights, privileges, duties, and powers existing between a parent and child as provided by Section 12.04 of this code.

(5) "Suit affecting the parent-child relationship" means a suit brought under this subtitle in which the appointment of a managing conservator or a possessory conservator, access to or support of a child, or establishment or termination of the parent-child relationship is sought.

(6) "Managing conservatorship" means the relationship between a child and a managing conservator appointed by court order or designated in an affidavit of relinquishment under this subtitle.

(7) "Authorized agency" means a public social agency authorized to care for children or to place children for adoption, or a private association, corporation, or person approved for that purpose by the Texas Department of Human Resources through a license, certification, or other means.

(8) "Illegitimate child" means a child who is not and has never been the legitimate child of a man and whose parent-child relationship with its natural mother has not been terminated by a court decree.

(9) "Governmental entity" means the state, a political subdivision of the state, or an agency of the state.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1253, ch. 476, §§ 1, 2, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1471, ch. 643, § 1, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 2269, ch. 551, § 1, eff. Aug. 31, 1981.]

[1] Section 31.01 et seq.

§ 11.02. Suit Authorized; Scope of Suit

(a) A suit affecting the parent-child relationship may be brought as provided in this subtitle.

(b) One or more matters covered by this subtitle may be determined in the suit. The court, on its own motion, may require the parties to replead in order that any issue affecting the parent-child relationship may be determined in the suit.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 11.03. Who May Bring Suit

A suit affecting the parent-child relationship may be brought by any person with an interest in the child, including the child (through a representative authorized by the court), any agency of the state or of a political subdivision of the state, and any authorized agency. A person has an interest in a child if the person has had possession and control of the child for at least six months immediately preceding the filing of the petition or is named in Section 11.09(a) of this code as being entitled to service by citation.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 2353, ch. 424, § 3, eff. Sept. 1, 1983.]

§ 11.04. Venue

(a) Except as otherwise provided in this subtitle, a suit affecting the parent-child relationship shall be brought in the county where the child resides.

(b) A suit in which adoption is sought may be brought in the county where the child resides, the petitioners reside, or if the child is placed for adoption by an authorized agency, in the county where the authorized agency is located.

(c) A child resides in the county where his parents (or parent if only one parent is living) reside, except that:

(1) if a managing conservator has been appointed by court order or designated in an affidavit of relinquishment, or if a custodian for the child has been appointed by order of a court before January 1, 1974, the child resides in the county where the managing conservator or custodian resides;

(2) if a guardian of the person has been appointed by order of a county or probate court and a managing conservator has not been appointed, the child resides in the county where the guardian of the person resides;

(3) if the parents of the child do not reside in the same county and neither a managing conservator nor a guardian of the person has been appointed, the child resides in the county where the parent having care and control of the child resides;

(4) if the child is under the care and control of an adult other than a parent and (A) neither a managing conservator nor a guardian of the person has been appointed or (B) the whereabouts of the managing conservator or the guardian of the person is unknown or (C) the person whose residence determines the residence of the child under this section has left the child under the care and control of the adult, the child resides where the adult having care and control of the child resides;

(5) if a guardian or custodian of the child has been appointed by order of a court of another state or nation, the child resides in the county where the guardian or custodian resides; or

(6) if it appears that the child is not under the care and control of an adult, the child resides where he is found.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1253, ch. 476, § 3, eff. Sept. 1, 1975.]

§ 11.045. Repealed by Acts 1983, 68th Leg., p. 709, ch. 160, § 10, eff. Sept. 1, 1983

See, now, § 11.53.

§ 11.05. Continuing Jurisdiction

(a) Except as otherwise provided by this section, by Section 17.05 of this code, or by Subchapter B of this chapter (Uniform Child Custody Jurisdiction Act),[1] when a court acquires jurisdiction of a suit affecting the parent-child relationship, that court retains continuing, exclusive jurisdiction of all parties and matters provided for under this subtitle in connection with the child. No other court of this state has jurisdiction of a suit affecting the parent-child relationship with regard to that child except on transfer as provided in Section 11.06 or 17.06 of this code.

(b) A final decree of adoption ends a court's continuing jurisdiction over the child, and any subsequent suit affecting the child shall be commenced as though the child had not been the subject of a suit for adoption or any other suit affecting the parent-child relationship prior to the adoption.

(c) A court shall have jurisdiction over a suit affecting the parent-child relationship if it has been, correctly or incorrectly, informed by the Texas Department of Human Resources that the child has not been the subject of a suit affecting the parent-child relationship and the petition states that no other court has continuing jurisdiction over the child.

(d)(1) In a suit in which a determination of paternity is sought, except as provided in paragraph (2), the jurisdiction of the court terminates when an order dismissing with prejudice a suit under Chapter 13 becomes final, or when an order under Subsection (b), Section 13.08, declaring that the alleged father is not the father of the child becomes final, or when an order denying voluntary legitimation under Section 13.21 becomes final.

(2) The jurisdiction of the court does not terminate if the child was subject to the jurisdiction of the court or some other court in a suit affecting the parent-child relationship prior to the commencement of the suit to determine paternity.

(e) A court does not acquire continuing, exclusive jurisdiction over the matters provided for under this subtitle in connection with the child before the entry of a final decree. A voluntary or involuntary dismissal of a suit affecting the parent-child relationship or the entry of a decree by another court having dominant jurisdiction of the suit terminates

all jurisdiction of the court. Unless a final decree has been entered by a court of continuing, exclusive jurisdiction, a subsequent suit shall be commenced as an original proceeding.

(f) A court acquires jurisdiction of a suit affecting the parent-child relationship without a transfer under Section 11.06 of this code, even though another court has continuing jurisdiction over the child, if the parents of the child have remarried each other after the dissolution of a previous marriage between the parents and file in the court acquiring jurisdiction a suit for the dissolution of their subsequent marriage combined with a suit affecting the parent-child relationship concerning the child.

(g) Except as provided by Subsection (d) of Section 11.53 of this code, a court may exercise its continuing, exclusive jurisdiction to modify all aspects of its decree, including managing conservatorship, possessory conservatorship, possession of and access to the child and support of the child. A court of this state may not exercise its continuing jurisdiction to modify any part of a decree if the child and all parties have established and continue to maintain their principal residence or home state outside this state. This subsection does not affect the power of the court to enforce and enter a judgment on its decree.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1254, ch. 476, §§ 4 to 6, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1201, ch. 584, § 1, eff. June 13, 1979; Acts 1979, 66th Leg., p. 1471, ch. 643, § 2, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1888, ch. 763, §§ 1, 2, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 706, ch. 160, §§ 4 to 6, eff. Sept. 1, 1983.]

[1] Section 11.51 et seq.

§ 11.051. Acquiring Jurisdiction Over Nonresident

In a suit affecting the parent-child relationship, the court may exercise status or subject matter jurisdiction over the suit as provided by Subchapter B of this chapter.[1] The court may also exercise personal jurisdiction over a person on whom service of citation is required or over the person's personal representative, although the person is not a resident or domiciliary of this state, if:

(1) the child was conceived in this state when a least one biological parent was a resident of this state and the person on whom service is required is a parent or an alleged or probable father of the child;

(2) the child resides in this state as a result of the acts or directives or with the approval of the person on whom service is required;

(3) the person on whom service is required has resided with the child in this state; or

(4) there is any basis consistent with the constitutions of this state and the United States for the exercise of the personal jurisdiction.

[Acts 1975, 64th Leg., p. 1255, ch. 476, § 7, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 707, ch. 160, § 7, eff. Sept. 1, 1983.]

[1] Section 11.51 et seq.

§§ 11.052, 11.053. Repealed by Acts 1983, 68th Leg., p. 709, ch. 160, § 10, eff. Sept. 1, 1983

See, now, §§ 11.05(g), 11.63.

§ 11.06. Transfer of Proceedings

(a) If venue is improperly laid in the court in which a suit affecting the parent-child relationship is filed, and no other court has continuing jurisdiction of the suit, on the timely motion of any party other than the petitioner, the court shall transfer the proceeding to the county where venue is proper on the basis of either a supporting uncontroverted affidavit or after a hearing when a controverting affidavit contesting the venue has been filed.

(b) If a petition for further action concerning the child or a motion to modify or enforce a decree is filed in a court having continuing jurisdiction of the suit, on the timely motion of any party, the court shall transfer the proceeding to the county where venue is proper on the basis of either a supporting uncontroverted affidavit or after a hearing when a controverting affidavit contesting the venue has been filed. If the basis of the motion is that the child resides in another county, the court may deny the motion if it is shown that the child has resided in that county for less than six months at the time the proceeding is commenced. If the child resided in another county for six months or longer, the court shall transfer the proceeding to that county. In computing the period of time during which the child has resided in that county, the court shall not require that the period of residence be continuous and uninterrupted but shall look to the child's principal residence during the said six-months period.

(c) On a showing that a suit for dissolution of the marriage of the child's parents has been filed in another court, the court having continuing jurisdiction of a suit affecting the parent-child relationship shall transfer the proceedings to the court where the dissolution of the marriage is pending.

(d) For the convenience of the parties and witnesses and in the interest of justice, the court, on the timely motion of any party, may transfer the proceeding to a proper court in any other county in the state.

(e) If a court has continuing jurisdiction over a child but another court has acquired jurisdiction over the child in a suit affecting the parent-child relationship under Section 11.05(c) or (e) of this code, the court previously having jurisdiction over

the child, on a motion of any party, on the court's motion, or on the request of the other court, shall transfer the proceeding to the court which has acquired jurisdiction under Section 11.05(c) or (e) of this code.

(f) A motion to transfer by a petitioner or movant is timely if it is made at the time the initial pleadings are filed. A motion to transfer by any other party is timely if it is made on or before the Monday next after the expiration of 20 days after the date of service of citation or notice of the action or before the commencement of the hearing, whichever is sooner. If a timely motion to transfer has been filed and no controverting affidavit is filed within the period allowed for its filing, the proceeding shall be transferred promptly without a hearing to the proper court.

(g) On or before the Monday next after the expiration of 20 days after the date of notice of a motion to transfer is served, a party desiring to contest the motion must file a controverting affidavit denying that grounds for the transfer exist.

(h) If a controverting affidavit contesting the motion to transfer is filed, each party is entitled to at least 10 days' notice of the hearing on the motion to transfer.

(i) Only evidence pertaining to venue shall be taken at the hearing. An order transferring or refusing to transfer the proceeding is not subject to interlocutory appeal.

(j) The court transferring a proceeding shall send to the proper court in the county to which transfer is made the complete files in all matters affecting the child, certified copies of all entries in the minutes, and a certified copy of any decree of dissolution of marriage issued in a suit joined with the suit affecting the parent-child relationship. If the transferring court retains jurisdiction of another child who was the subject of the suit, the court shall send a copy of the complete files to the court to which the transfer is made and shall keep the original files.

(k) A court to which a transfer is made becomes the court of continuing jurisdiction, and all proceedings in the suit are continued as if it were brought there originally. All judgments, decrees, and orders transferred shall have the same effect and be enforced as if originally entered in the transferee court. The transferee court shall enforce judgments, decrees, and orders of the transferring court by contempt or by any other means by which the transferring court could have enforced them. The transferee court shall specifically have the power to punish disobedience of the transferring court's judgments, decrees, and orders, whether occurring before or after the transfer, by contempt. After transfer, the transferring court does not retain jurisdiction of the child who is the subject of the transfer.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1255, ch. 476, § 8, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1888, ch. 763, § 3, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 942, ch. 355, § 1, eff. Sept. 1, 1981.]

§ 11.07. Commencement of Suit and Petition for Further Remedy

(a) A suit affecting the parent-child relationship shall be commenced by the filing of a petition as provided in this chapter.

(b) Except in a motion to modify as provided in Section 14.08 of this code, a request for further action concerning a child who is the subject of a suit affecting the parent-child relationship and who is under the jurisdiction of a court with continuing jurisdiction shall be initiated by the filing of a petition as provided in this chapter.

(c) On the receipt of a petition requesting further action concerning the child in the court of continuing jurisdiction, the clerk shall file the petition and all other papers relating to the request for further action in the file of the suit affecting the parent-child relationship under the same docket number as the prior proceeding, except that if the petition requests the adoption of the child and if the petition alleges that the child has been placed for adoption with the petitioners by the Texas Department of Human Resources or by an agency authorized by the department to place children for adoption, the clerk shall file the petition and all other papers relating to the suit in a new file having a new docket number.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1255, ch. 476, § 9, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 4921, ch. 875, § 1, eff. Sept. 1, 1983.]

§ 11.071. Identification of Court of Continuing Jurisdiction

(a) The petitioner or the court shall request from the Texas Department of Human Resources identification of the court that last had jurisdiction of the child in a suit affecting the parent-child relationship unless:

(1) the petition alleges that no court has continuing jurisdiction of the child, and the issue is not disputed by the pleadings; or

(2) the petition alleges that the court in which the suit, petition for further remedy, or motion to modify has been filed has acquired and retains continuing jurisdiction of the child as the result of a prior proceeding, and the issue is not disputed by the pleadings.

(b) The department shall, on the written request of the court, an attorney, or any party, identify the court that last had jurisdiction of the child in a suit

affecting the parent-child relationship and give the docket number of the suit, or state that the child has not been the subject of a suit affecting the parent-child relationship. The child shall be identified in the request by name, birthdate, and place of birth. The department shall transmit this information within 10 days after the day the request is received.

(c) If a request for information from the department relating to the identity of the court having continuing jurisdiction of the child has been made pursuant to Subsection (a), no final order, except an order of dismissal, shall be entered until the information is filed with the court. If a final order is entered in the absence of the filing of the information from the department, the order is voidable on a showing that a court other than the court that entered the order had continuing jurisdiction.

(d) If the court in which a petition in a suit affecting the parent-child relationship is filed determines that another court has continuing jurisdiction of the child, the court in which the petition is filed shall dismiss the suit without prejudice.

[Acts 1975, 64th Leg., p. 1255, ch. 476, § 10, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2269, ch. 551, § 2, eff. Aug. 31, 1981.]

§ 11.08. Contents of Petition

(a) The petition and all other documents in a proceeding brought under this subtitle (except a suit for adoption of an adult) shall be entitled "In the interest of _____, a child." In a suit in which adoption of a child is sought, the style shall be, "In the interest of a child."

(b) The petition must include:

(1) a statement that the court in which the petition is filed has continuing jurisdiction or that no court has continuing jurisdiction of the suit;

(2) the name, sex, place and date of birth, and place of residence of the child, except that if adoption of a child is sought, the name of the child may be omitted;

(3) the full name, age, and place of residence of the petitioner and his relationship to the child or the fact that no relationship exists;

(4) the names, ages, and place of residence of the parents, except in a suit in which adoption is sought;

(5) the name and place of residence of the managing conservator, if any, or the child's custodian, if any, appointed by an order of the court before January 1, 1974, or by order of a court of another state or nation;

(6) the names and places of residence of the guardians of the person and estate of the child, if any;

(7) the names and places of residence of possessory conservators or other persons, if any, having access to the child under an order of the court;

(8) in a suit in which termination of the parent-child relationship between an illegitimate child and its mother is sought, the name and place of residence of the alleged father or probable father of the child or a statement that the identity of the father of the child is unknown;

(9) a full description and statement of value of all property owned or possessed by the child;

(10) a statement describing what action the court is requested to make concerning the child and the statutory grounds on which the request is made; and

(11) any other information required by other provisions of this subtitle.

(c) The petition and other matters in a suit in which a determination of paternity is sought, if the petitioner is a person other than the alleged father of the child, are confidential, and the district clerk and employees of the clerk may not disclose to any person other than the court, the department, or a party to the suit any matter concerning the suit. This subsection does not apply if and when the suit is set for trial under Subsection (b) of Section 13.05 of this code.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1256, ch. 476, §§ 11, 12, eff. Sept. 1, 1975.]

§ 11.09. Citation and Notice

(a) Except as provided in Subsection (b) of this section, the following persons are entitled to service of citation on the filing of a petition in a suit affecting the parent-child relationship:

(1) the managing conservator, if any;

(2) possessory conservators, if any;

(3) persons, if any, having access to the child under an order of the court;

(4) persons, if any, required by law or by order of a court to provide for the support of a child;

(5) the guardian of the person of the child, if any;

(6) the guardian of the estate of the child, if any;

(7) each parent as to whom the parent-child relationship has not been terminated or process has not been waived under Section 15.03(c)(2) of this code;

(8) in a suit in which termination of the parent-child relationship between an illegitimate child and its mother is sought, the alleged father or probable father, unless there is attached to the petition an affidavit of waiver of interest in a child executed by the alleged father or probable father as provided in Section 15.041 of this code or unless the petition states that the identity of the father is unknown; and

(9) in a suit to determine the paternity of a child, the alleged father, unless the alleged father is a petitioner.

(b) Service of citation may be given to any other person who has or who may assert an interest in the child and may be given to the unknown father of an illegitimate child.

(c)(i) Except in a suit in which termination of the parent-child relationship is sought, citation on the filing of a petition in a suit affecting the parent-child relationship or notice of a hearing shall be issued and served as in other civil cases except that citation or notice may be given by registered or certified mail, return receipt requested. In such cases, the clerk shall mail the citation and a copy of the petition to the person so notified marked for delivery to the addressee only. The filing of the returned receipt indicating delivery by registered or certified mail to the proper person shall be sufficient proof of the fact of service.

(ii) In a suit in which termination of the parent-child relationship is sought, citation on the filing of a petition or notice of a hearing shall be issued and served as in other civil cases.

(d) Citation may be given by publication as in other civil cases to persons entitled to service of citation who cannot be notified by personal service or registered or certified mail and to persons whose names are unknown. The notice shall be published one time. If the name of a person entitled to service of citation is unknown, the notice to be published shall be addressed to "All Whom It May Concern." One or more causes to be heard on a certain day may be included in one notice and hearings may be continued from time to time without further notice.

(e) Notice by publication shall be sufficient if given in substantially the following form:

"STATE OF TEXAS

To (names of persons to be served with citation), and to all whom it may concern (if the name of any person to be served with citation is unknown), Respondent(s),

GREETINGS:

"YOU ARE HEREBY COMMANDED to appear and answer before the Honorable District Court, _____ Judicial District, _____ County, Texas, at the Courthouse of said county in _____, Texas, at or before 10 o'clock a. m. of the Monday next after the expiration of 20 days from the date of service of this citation, then and there to answer the petition of _____, Petitioner, filed in said Court on the _____ day of _____, 19__, against _____, Respondent(s), and said suit being number _____ on the docket of said Court, and entitled 'In the interest of _____, a child,' the nature of which suit is a request to (statement of relief sought, e. g., 'terminate the parent-child relationship'). Said child was born the _____ day of _____, 19__, in (place of birth).

"The court has authority in this suit to enter any judgment or decree in the child's interest which will be binding upon you, including the termination of the parent-child relationship, the determination of paternity, and the appointment of a conservator with authority to consent to the child's adoption.

"Issued and given under my hand and seal of said Court at _____, Texas, this the _____ day of _____, 19__.

"_____,
Clerk of the District Court of
_____ County, Texas.
By _____, Deputy."

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1257, ch. 476, § 13, eff. Sept. 1, 1975.]

§ 11.10. Guardian Ad Litem

(a) In any suit in which termination of the parent-child relationship is sought, the court shall appoint a guardian ad litem to represent the interests of the child, unless the child is a petitioner or unless an attorney ad litem has been appointed for the child or unless the court finds that the interests of the child will be represented adequately by a party to the suit and are not adverse to that party. In any other suit under this subtitle, the court may appoint a guardian ad litem. The managing conservator may be appointed guardian ad litem if he is not a parent of the child or a person petitioning for adoption of the child and if he has no personal interest in the suit.

(b) A guardian ad litem shall be appointed to represent any other person entitled to service of citation under the provisions of Section 11.09 of this code if the person is incompetent or a child, unless the person has executed an affidavit of relinquishment of parental rights or an affidavit of waiver of interest in child containing a waiver of service of citation.

(c) The court may appoint an attorney for any party in a case in which it deems representation necessary to protect the interests of the child who is the subject matter of the suit.

(d) In any suit brought by a governmental entity seeking termination of the parent-child relationship or to be named conservator of a child, the court shall appoint an attorney ad litem to represent the interests of the child as soon as practicable to insure adequate representation of the child's interest. In any suit in which termination of the parent-child relationship is sought, the court shall appoint an attorney ad litem to represent the interests of each indigent parent of the child who responds in opposition to the termination. If both parents of the child are indigent and oppose termination and the court finds that the interests of the parents are not in

conflict, the court may appoint a single attorney ad litem to represent the interests of both parents.

(e) An attorney appointed to represent a child or parent as authorized by this section is entitled to a reasonable fee in the amount set by the court which is to be paid by the parents of the child unless the parents are indigent. If indigency is shown, an attorney appointed to represent a child or parent in a suit to terminate the parent-child relationship shall be paid from the general funds of the county where the suit is heard in the same manner and according to the same fee schedule as applies to an attorney appointed to represent a child in a suit under Title 3 of this code [1] and as provided by Section 51.10(i) of this code.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1258, ch. 476, § 14, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1471, ch. 643, § 3, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 2709, ch. 740, § 1, eff. June 16, 1981; Acts 1983, 68th Leg., p. 1554, ch. 298, § 1 eff. Aug. 29, 1983.]

[1] Section 51.01 et seq.

Section 3 of the 1983 amendatory act provides:

"The changes in the law provided by this Act apply to each suit affecting the parent-child relationship filed on or after the effective date of this Act and to those suits filed before the effective date of this Act on which no hearing on the merits of the case has been held. If a suit affecting the parent-child relationship in which a hearing has been held before the effective date of this Act is remanded to the trial court for a rehearing on its merits for grounds other than those based on the changes provided by this Act, unless the court provides otherwise, the new trial is conducted under the law as changed by this Act. This section does not preclude, nor does it require, the reversal of any suit affecting the parent-child relationship in which termination of the parent-child relationship was granted before the effective date of this Act on a finding based on the preponderance of the evidence presented at the hearing."

§ 11.11. Temporary Orders

(a) In a suit affecting the parent-child relationship, the court may make any temporary order for the safety and welfare of the child, including but not limited to an order:

(1) for the temporary conservatorship of the child;

(2) for the temporary support of the child;

(3) restraining any party from molesting or disturbing the peace of the child or another party;

(4) prohibiting a person from removing the child beyond a geographical area identified by the court; or

(5) for payment of reasonable attorney's fees, and expenses.

(b) Except as provided by Subsection (c) of this section, temporary restraining orders and temporary injunctions under this section shall be granted without the necessity of an affidavit or verified pleading stating specific facts showing that immediate and irreparable injury, loss, or damage will result before notice can be served and a hearing can be held. An order may not be entered under Subsection (a)(1), (2), or (5) of this section except after notice and a hearing. A temporary restraining order granted under this section need not:

(1) define the injury or state why it is irreparable; or

(2) state why the order was granted without notice.

(c) Except on a verified pleading or an affidavit in accordance with the Texas Rules of Civil Procedure, an order may not be entered:

(1) attaching the body of the child;

(2) taking the child into the possession of the court or of a person designated by the court; or

(3) excluding a parent from possession of or access to a child.

(d) In a suit under this subtitle the court may dispense with the necessity of a bond in connection with temporary orders in behalf of the child.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1259, ch. 476, § 15, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 943, ch. 355, § 2, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 2353, ch. 424, § 4, eff. Sept. 1, 1983.]

§ 11.12. Social Study

(a) In a suit affecting the parent-child relationship, the court may order the preparation of a social study into the circumstances and condition of the child and of the home of any person seeking managing conservatorship or possession of the child.

(b) The social study may be made by any state agency, including the Texas Department of Human Resources, or any private agency, or any person appointed by the court. If an authorized agency is the managing conservator, the social study shall be made by the authorized agency. The social study shall be made according to criteria established by the court.

(c) The agency or person making the social study shall file its findings and conclusions with the court on a date set by the court. The report shall be made a part of the record of the suit; however, the disclosure of its contents to the jury is subject to the rules of evidence.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1259, ch. 476, § 16, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 2270, ch. 551, § 3, eff. Aug. 31, 1981.]

§ 11.13. Jury

(a) In a suit affecting the parent-child relationship, except a suit in which adoption is sought, any party may demand a jury trial.

(b) The court may not enter a decree that contravenes the verdict of the jury, except with respect to the issues of the specific terms and conditions of access to the child, support of the child, and the rights, privileges, duties, and powers of conserva-

tors, on which the court may submit or refuse to submit issues to the jury as the court determines appropriate, and on which issues the jury verdict, if any, is advisory only.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1259, ch. 476, § 17, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 3187, ch. 833, § 1, eff. Sept. 1, 1981.]

§ 11.14. Hearing

(a) Except as otherwise provided in this subtitle, proceedings shall be as in civil cases generally.

(b) On the agreement of all parties to the suit, the court may limit attendance at the hearing to only those persons who have a direct interest in the suit or in the work of the court.

(c) The court may compel the attendance of witnesses necessary for the proper disposition of the petition, including a representative of the agency making the social study, who may be compelled to testify.

(d) A record shall be made as in civil cases generally unless waived by the parties with the consent of the court.

(e) The rules of evidence apply as in other civil cases.

(f) When information contained in a report, study, or examination is before the court, the person making the report, study, or examination is subject to both direct examination and cross-examination as in civil cases generally.

(g) The hearing may be adjourned from time to time.

(h) Repealed by Acts 1975, 64th Leg., p. 1259, ch. 476, § 18, eff. Sept. 1, 1975.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1259, ch. 476, § 18, eff. Sept. 1, 1975.]

§ 11.15. Findings

(a) Except as provided by Subsection (b) of this section, the court's findings shall be based on a preponderance of the evidence under rules generally applicable to civil cases.

Text of subsec. (b) as added by Acts 1983, 68th Leg., p. 1555, ch. 298, § 2

(b) In a suit in which termination of the parent-child relationship is sought, each finding required for termination of the parent-child relationship must be based on clear and convincing evidence.

Text of subsec. (b) as added by Acts 1983, 68th Leg., p. 2354, ch. 424, § 5

(b) A decree in a suit affecting the parent-child relationship, in which any person is ordered to pay child support, must contain the social security number of each party to the suit, including the child.

(c) In this section, "clear and convincing evidence" means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 1555, ch. 298, § 2, eff. Aug. 29, 1983.]

Section 3 of Acts 1983, 68th Leg., p. 1555, ch. 298, provides:

"The changes in the law provided by this Act apply to each suit affecting the parent-child relationship filed on or after the effective date of this Act and to those suits filed before the effective date of this Act on which no hearing on the merits of the case has been held. If a suit affecting the parent-child relationship in which a hearing has been held before the effective date of this Act is remanded to the trial court for a rehearing on its merits for grounds other than those based on the changes provided by this Act, unless the court provides otherwise, the new trial is conducted under the law as changed by this Act. This section does not preclude, nor does it require, the reversal of any suit affecting the parent-child relationship in which termination of the parent-child relationship was granted before the effective date of this Act on a finding based on the preponderance of the evidence presented at the hearing."

§ 11.16. Copies of Decree

Copies of a decree of termination or adoption issued under Section 15.05 or Section 16.08 of this code are not required to be mailed to parties as provided in Rules 119a and 239a, Texas Rules of Civil Procedure.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1259, ch. 476, § 19, eff. Sept. 1, 1975.]

§ 11.17. Central Record File

(a) Except as provided by Subsection (b) of this section, the clerk of each court having jurisdiction of suits affecting the parent-child relationship shall transmit to the Texas Department of Human Resources a copy of the decree entered in each suit affecting the parent-child relationship, together with the name and all prior names, birthdate, and place of birth of the child. The department shall maintain these records in a central file according to the name, birthdate, and place of birth of the child, the court which rendered the decree, and the docket number of the suit.

(b) On entry of a decree of adoption or on the termination of jurisdiction of a court as provided in Section 11.05(d) of this code, the clerk of the court at petitioner's request shall transmit to the department a complete file in the case, including all pleadings, papers, studies, and records in the suit other than the minutes of the court. The clerk of the court, on entry of a decree of adoption, shall send to the department a certified copy of the petition and decree of adoption. The clerk may not transmit to the department pleadings, papers, studies, and records relating to a suit for divorce or annulment

or to declare a marriage void. When the department receives the complete file or petition and decree of adoption, it shall close the records concerning that child; and except for statistical purposes, it shall not disclose any information concerning the prior proceedings affecting the child. Except as provided in Subsection (d) of this section, any subsequent inquiries concerning the child shall be handled as though the child had not been previously the subject of a suit affecting the parent-child relationship. On the receipt of additional records concerning a child who has been the subject of a suit affecting the parent-child relationship in which the records have been closed as required in this section, a new file shall be made and maintained as other records required by this section.

(c) The department may charge a reasonable fee to cover the cost of determining and sending information concerning the identity of courts with continuing jurisdiction. The receipts shall be deposited in any financial institution as determined by the commissioner of welfare and withdrawn as necessary for the sole purpose of operating and maintaining the central record file.

(d) The records concerning a child maintained by the district clerk after entry of a decree of adoption, and all the records required under this section to be maintained by the department are confidential, and no person is entitled to access to or information from these records except as provided by this subtitle or on an order of the court which issued the decree for good cause.

(e) The department may utilize microfilm or other suitable means for maintaining the central record file. A certified reproduction of a document maintained by the department is admissible in evidence as the original document.

(f) The court, on the motion of a party or on the court's own motion, may order the sealing of the file, the minutes of the court, or both, in a proceeding in which adoption or termination was sought. This subsection does not relieve the clerk from the duty to transmit files or petitions and decrees of adoption to the department as required by Subsection (b) of this section.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1259, ch. 476, §§ 20, 21, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 2270, ch. 551, § 4, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 1782, ch. 342, § 3, eff. Jan. 1, 1984.]

§ 11.18. Costs

(a) In any proceeding under this subtitle, including, but not limited to, habeas corpus, enforcement, and contempt proceedings, the court may award costs. Reasonable attorney's fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order for fees in his own name.

(b) No separate filing fee is required in any suit affecting the parent-child relationship joined with a suit for dissolution of marriage under Title 1 of this code.[1] Additional filing fees shall not be required if more than one form of relief is requested in a suit affecting the parent-child relationship.

(c) If the court orders the Texas Department of Human Resources to prepare the social study prescribed by Section 11.12 of this code, the court shall award a reasonable fee for the preparation of the study to the department. The department's fee shall be taxed as costs, and shall be paid directly to the department. The department may enforce the order for the fee in its own name.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1981, 67th Leg., p. 944, ch. 355, § 3, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 4609, ch. 783, § 1, eff. Aug. 29, 1983.]

[1] Section 1.01 et seq.

§ 11.19. Appeal

(a) Appeals from orders, decrees, or judgments entered in suits affecting the parent-child relationship, when allowed under this section or under other provisions of law, shall be as in civil cases generally. Appeals in suits affecting the parent-child relationship wherein termination of that relationship is in issue shall be given precedence over other civil cases by the appellate courts.

(b) An appeal may be taken by any party to a suit affecting the parent-child relationship from an order, decree, or judgment:

(1) entered under Chapter 13 of this code;

(2) entered under Chapter 14 of this code appointing or refusing to appoint a managing conservator; appointing or refusing to appoint a possessory conservator; ordering or refusing to order payments for support of a child; or modifying any such order previously entered;

(3) entered under Chapter 15 of this code terminating or refusing to terminate the parent-child relationship; or appointing a managing conservator;

(4) entered under Chapter 16 of this code granting or refusing an adoption.

(c) An appeal from an order, judgment, or decree, with or without a supersedeas bond, does not suspend the order, decree, or judgment unless suspension is ordered by the court entering the order, decree, or judgment. The appellate court, on a proper showing, may permit the order, decree, or judgment to be suspended.

(d) On the motion of the parties or on its own motion the appellate court in its opinion may identi-

fy the parties by fictitious names or by their initials only.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974; Acts 1983, 68th Leg., p. 5233, ch. 962, § 1, eff. June 19, 1983.]

§ 11.20. Representation of Department

In any suit brought under Subtitle A or C of this title [1] in which the Texas Department of Human Resources is seeking to be named conservator of a child, the department shall be represented in the trial court by the prosecuting attorney who represents the state in criminal cases in the district or county court of the county where the suit is filed or transferred or by the attorney general.

[Acts 1977, 65th Leg., p. 1262, ch. 486, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 2010, ch. 787, § 2, eff. Aug. 27, 1979.]

[1] Section 11.01 et seq. or 31.01 et seq.

§ 11.21. Statement or Testimony of Child

(a) This section applies only to a proceeding affecting the parent-child relationship, including but not limited to a proceeding under Title 2 or 4 of this code,[1] in which a child 12 years of age or younger is alleged to have been abused, and applies only to the statement or testimony of that child.

(b) The recording of an oral statement of the child recorded prior to the proceeding is admissible into evidence if:

(1) no attorney for a party to the proceeding was present when the statement was made;

(2) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(3) the recording equipment was capable of making an accurate recording, the operator was competent, and the recording is accurate and has not been altered;

(4) the statement was not made in response to questioning calculated to lead the child to make a particular statement;

(5) each voice on the recording is identified;

(6) the person conducting the interview of the child in the recording is present at the proceeding and available to testify or be cross-examined by either party; and

(7) each party to the proceeding is afforded an opportunity to view the recording before it is offered into evidence.

(c) The court may, on the motion of a party to the proceeding, order that the testimony of the child be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the court, the finder of fact, and the parties to the proceeding. Only an attorney for each party, an attorney ad litem for the child or other person whose presence would contribute to the welfare and well-being of the child, and persons necessary to operate the equipment may be present in the room with the child during his testimony. Only the attorneys for the parties may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony, but does not permit the child to see or hear them.

(d) The court may, on the motion of a party to the proceeding, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court, the finder of fact, and the parties to the proceeding. Only those persons permitted to be present at the taking of testimony under Subsection (c) of this section may be present during the taking of the child's testimony. Only the attorneys for the parties may question the child, and the persons operating the equipment shall be confined from the child's sight and hearing as provided by Subsection (c). The court shall ensure that:

(1) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(2) the recording equipment was capable of making an accurate recording, the operator was competent, and the recording is accurate and is not altered;

(3) each voice on the recording is identified; and

(4) each party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom.

(e) If the testimony of a child is taken as provided by Subsection (c) or (d) of this section, the child may not be compelled to testify in court during the proceeding.

[Acts 1983, 68th Leg., p. 3831, ch. 599, § 2, eff. Aug. 29, 1983.]

[1] Section 11.01 et seq. or 71.01 et seq.

SUBCHAPTER B. UNIFORM CHILD CUSTODY JURISDICTION ACT

§ 11.51. Purposes; Construction of Provisions

(a) The general purposes of this subchapter are to:

(1) avoid jurisdictional competition and conflict with courts of other states in matters of child custody that have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

(2) promote cooperation with the courts of other states to the end that a custody decree is rendered in the state that can best decide the case in the interest of the child;

(3) assure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and his family have the

closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;

(4) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(5) deter abductions and other unilateral removals of children undertaken to obtain custody awards;

(6) avoid relitigation of custody decisions of other states in this state insofar as feasible;

(7) facilitate the enforcement of custody decrees of other states;

(8) promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and

(9) make uniform the law of those states that enact it.

(b) This subchapter shall be construed to promote the general purposes stated in this section.

[Acts 1983, 68th Leg., p. 691, ch. 160, § 1, eff. Sept. 1, 1983.]

§ 11.52. Definitions

In this subchapter:

(1) "Contestant" means a person, including a parent, who claims a right to custody or visitation rights, with respect to a child.

(2) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights, but does not include a decision relating to child support or any other monetary obligation of any person.

(3) "Custody proceeding" includes a proceeding in which a custody determination is one of several issues, such as an action for divorce or separation, and includes child neglect and dependency proceedings.

(4) "Decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding and includes an initial decree and a modification decree.

(5) "Home state" means the state in which the child immediately preceding the time involved lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six-month or other period.

(6) "Initial decree" means the first custody decree concerning a particular child.

(7) "Modification decree" means a custody decree that modifies or replaces a prior decree, whether made by the court that rendered the prior decree or by another court.

(8) "Physical custody" means actual possession and control of a child.

(9) "Person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.

(10) "Custody" means managing conservatorship of a child.

(11) "Visitation" means possession of or access to a child.

[Acts 1983, 68th Leg., p. 691, ch. 160, § 1, eff. Sept. 1, 1983.]

§ 11.53. Jurisdiction

(a) A court of this state that is competent to decide child custody matters has jurisdiction to make a child custody determination by initial decree or modification decree or order if:

(1) this state:

(A) is the home state of the child on the date of the commencement of the proceeding; or

(B) had been the child's home state within six months before the date of the commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this state;

(2) it appears that no other state would have jurisdiction under Subdivision (1) of Subsection (a) of this section and it is in the best interest of the child that a court of this state assume jurisdiction because:

(A) the child and his parents or the child and at least one contestant have a significant connection with this state other than mere physical presence in this state; and

(B) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(3) the child is physically present in this state and:

(A) the child has been abandoned; or

(B) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or there is a serious and immediate question concerning the welfare of the child; or

(4) it is in the best interest of the child that this court assume jurisdiction and:

(A) it appears that no other state would have jurisdiction under prerequisites substantially in accordance with Subdivision (1), (2), or (3) of this subsection; or

(B) another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child.

(b) Except under Subdivisions (3) and (4) of Subsection (a) of this section, physical presence in this state of the child or of the child and one of the contestants is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(c) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

(d) Except on written agreement of all the parties, a court may not exercise its continuing jurisdiction to modify custody if the child and the party with custody have established another home state unless the action to modify was filed before the new home state was acquired.

[Acts 1983, 68th Leg., p. 691, ch. 160, § 1, eff. Sept. 1, 1983.]

§ 11.54. Notice and Opportunity to be Heard

Before making a custody decree based on jurisdiction established under this subchapter, reasonable notice and opportunity to be heard must be given to the contestants, to any parent whose parental rights have not been previously terminated, and to any person who has physical custody of the child. If any of these persons is outside this state, notice and opportunity to be heard must be given under Section 11.55 of this code.

[Acts 1983, 68th Leg., p. 691, ch. 160, § 1, eff. Sept. 1, 1983.]

§ 11.55. Notice to Persons Outside This State; Submission to Jurisdiction

(a) Notice required for the exercise of jurisdiction over a person outside this state must be given in a manner reasonably calculated to give actual notice and may be:

(1) by personal delivery outside this state in the manner prescribed for service of process within this state;

(2) in the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(3) by any form of mail addressed to the person to be served and requesting a receipt, subject to the requirements of the Texas Rules of Civil Procedure; or

(4) as directed by the court, including publication, if other means of notification are ineffective, subject to the requirements of the Texas Rules of Civil Procedure.

(b) Notice under this section must be delivered, mailed, or published with sufficient time to allow for filing of an answer before any hearing in this state, in accordance with the Texas Rules of Civil Procedure applicable to the filing of an original lawsuit. Each party whose rights, privileges, duties, or powers may be affected by the action is entitled to receive notice by citation and shall be commanded to appear by filing a written answer. Thereafter, the proceedings shall be as in civil cases generally.

(c) Proof of service outside this state may be made by the affidavit of the individual who made the service, or in the manner prescribed by the law of this state, by the order under which the service is made, or by the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(d) Notice is not required if a person submits to the jurisdiction of the court.

[Acts 1983, 68th Leg., p. 691, ch. 160, § 1, eff. Sept. 1, 1983.]

§ 11.56. Simultaneous Proceedings in Other State

(a) A court of this state may not exercise its jurisdiction under this subchapter if, at the time of filing the petition, a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this subchapter, unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.

(b) Before hearing the petition in a custody proceeding, the court shall examine the pleadings and other information supplied by the parties under Section 11.59 of this code and shall consult the child custody registry established under Section 11.66 of this code concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state, it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(c) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction, it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with Sections 11.69 through 11.72 of this code. If a court of this state has made a custody

decree before being informed of a pending proceeding in a court of another state, it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction, it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum.

[Acts 1983, 68th Leg., p. 691, ch. 160, § 1, eff. Sept. 1, 1983.]

§ 11.57. Inconvenient Forum

(a) A court that has jurisdiction under this chapter to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(b) A finding of inconvenient forum may be made on the court's own motion or on the motion of a party or a guardian ad litem or other representative of the child.

(c) In determining if it is an inconvenient forum, the court shall consider if it is in the best interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

(1) if another state is or recently was the child's home state;

(2) if another state has a closer connection with the child and his family or with the child and one or more of the contestants;

(3) if substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;

(4) if the parties have agreed on another forum that is no less appropriate; and

(5) if the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in Section 11.51 of this code.

(d) Before determining whether to decline or retain jurisdiction, the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

(e) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings, or it may stay the proceedings on condition that a custody proceeding be promptly commenced in another named state or on any other conditions that may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.

(f) The court may decline to exercise its jurisdiction under this subchapter if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.

(g) If it appears to the court that it is clearly an inappropriate forum, it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses, including attorney's fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(h) On dismissal or stay of proceedings under this section, the court shall inform the court found to be the more appropriate forum of this fact or, if the court that would have jurisdiction in the other state is not certainly known, shall transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

(i) Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum shall be filed in the custody registry of the appropriate court. On assuming jurisdiction, the court of this state shall inform the original court of this fact.

[Acts 1983, 68th Leg., p. 691, ch. 160, § 1, eff. Sept. 1, 1983.]

§ 11.58. Jurisdiction Declined by Reason of Conduct

(a) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct, the court may decline to exercise jurisdiction if this is just and proper under the circumstances.

(b) Unless required in the interest of the child, the court may not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state, the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

(c) In an appropriate case, a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorney's fees, incurred by other parties or their witnesses.

[Acts 1983, 68th Leg., p. 691, ch. 160, § 1, eff. Sept. 1, 1983.]

§ 11.59. Information Under Oath to be Submitted to the Court

(a) Unless all the contestants are residing in this state, every party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last five years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit every party shall further declare under oath whether:

(1) he has participated (as a party, witness, or in any other capacity) in any other litigation concerning the custody of the same child in this or any other state;

(2) he has information of any proceeding concerning the child pending in a court of this or any other state; and

(3) he knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(b) If the declaration as to any of the items in Subsection (a) of this section is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(c) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

[Acts 1983, 68th Leg., p. 691, ch. 160, § 1, eff. Sept. 1, 1983.]

§ 11.60. Additional Parties

(a) If the court learns from information furnished by the parties under Section 11.59 of this code or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that the person:

(1) be joined as a party; and

(2) be notified of the pendency of the proceeding and of his joinder as a party.

(b) If the person joined as party is outside this state, he must be served with process or otherwise notified in accordance with Section 11.55 of this code.

[Acts 1983, 68th Leg., p. 691, ch. 160, § 1, eff. Sept. 1, 1983.]

§ 11.61. Appearance of Parties and the Child

(a) The court may order any party to the proceeding who is in this state to appear personally before the court. If that party has physical custody of the child, the court may order that he appear personally with the child.

(b) If a party to the proceeding whose presence is desired by the court is outside this state, with or without the child, the court may order that the notice given under Section 11.55 of this code include a statement directing that party to appear personally, with or without the child, and declaring that failure to appear may result in a decision adverse to that party.

(c) If a party to the proceeding who is outside this state is directed to appear under Subsection (b) of this section or desires to appear personally before the court, with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party appearing and of the child if this is just and proper under the circumstances.

[Acts 1983, 68th Leg., p. 691, ch. 160, § 1, eff. Sept. 1, 1983.]

§ 11.62. Binding Force and Res Judicata Effect of Custody Decree

A custody decree of a court of this state that has jurisdiction under Section 11.53 of this code binds all parties who have been served in this state or notified in accordance with Section 11.55 of this code or who have submitted to the jurisdiction of the court and who have been given an opportunity to be heard. As to these parties, the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made, unless and until that determination is modified.

[Acts 1983, 68th Leg., p. 691, ch. 160, § 1, eff. Sept. 1, 1983.]

§ 11.63. Recognition of Out-of-State Custody Decrees

The courts of this state shall recognize and enforce an initial or modification decree of a court of another state that had assumed jurisdiction under statutory provisions substantially in accordance with this subchapter or that was made under factual circumstances meeting the jurisdictional standards of this subchapter, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this subchapter.

[Acts 1983, 68th Leg., p. 691, ch. 160, § 1, eff. Sept. 1, 1983.]

§ 11.64. Modification of Custody Decree of Another State

(a) If a court of another state has made a custody decree, a court of this state may not modify the decree unless:

(1) it appears to the court of this state that the court that rendered the decree does not have

jurisdiction under jurisdictional prerequisites substantially in accordance with this subchapter or has declined to assume jurisdiction to modify the decree; and

(2) the court of this state has jurisdiction.

(b) If a court of this state is authorized under Subsection (a) of this section and Section 11.58 of this code to modify a custody decree of another state, it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with Section 11.72 of the code.

[Acts 1983, 68th Leg., p. 691, ch. 160, § 1, eff. Sept. 1, 1983.]

§ 11.65. Filing and Enforcement of Custody Decree of Another State

(a) On payment of proper fees, a certified copy of a custody decree of another state may be filed in the office of the clerk of any district court or other appropriate court of this state. The clerk shall treat the decree in the same manner as a custody decree of a district court or other appropriate court of this state. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state.

(b) A person whose violation of a custody decree of another state makes it necessary to enforce the decree in this state may be required to pay necessary travel and other expenses, including attorney's fees, incurred by the party entitled to the custody or his witnesses.

[Acts 1983, 68th Leg., p. 691, ch. 160, § 1, eff. Sept. 1, 1983.]

§ 11.66. Registry of Out-of-State Custody Decrees and Proceedings

The clerk of each district court or other appropriate court shall maintain a registry in which he shall enter:

(1) certified copies of custody decrees of other states received for filing;

(2) communications as to the pendency of custody proceedings in other states;

(3) communications concerning a finding of inconvenient forum by a court of another state; and

(4) other communications or documents concerning custody proceedings in another state that may affect the jurisdiction of a court of this state or the disposition to be made by it in a custody proceeding.

[Acts 1983, 68th Leg., p. 691, ch. 160, § 1, eff. Sept. 1, 1983.]

§ 11.67. Certified Copies of Custody Decree

The clerk of the district court or other appropriate court of this state at the request of the court of another state or at the request of any person who is affected by or has legitimate interest in a custody decree, shall, on payment of proper fees, certify and forward a copy of the decree to that court or person.

[Acts 1983, 68th Leg., p. 691, ch. 160, § 1, eff. Sept. 1, 1983.]

§ 11.68. Taking Testimony in Another State

In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms on which the testimony shall be taken.

[Acts 1983, 68th Leg., p. 691, ch. 160, § 1, eff. Sept. 1, 1983.]

§ 11.69. Hearings and Studies in Another State; Orders to Appear

(a) A court of this state may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this state, and to forward to the court of this state certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or, if necessary, ordered paid by the state as costs of court.

(b) A court of this state may request the appropriate court of another state to order a party to custody proceedings pending in the court of this state to appear in the proceedings, and if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

[Acts 1983, 68th Leg., p. 691, ch. 160, § 1, eff. Sept. 1, 1983.]

§ 11.70. Assistance to Courts of Other States

(a) On request of the court of another state, the courts of this state that are competent to hear custody matters may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this state or may order social studies to be made for use in a custody proceeding in another state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced and any social studies prepared shall be

forwarded by the clerk of the court to the requesting court.

(b) A person in this state may voluntarily give his testimony or statement in this state for use in a custody proceeding outside this state.

(c) On request of the court of another state, a competent court of this state may order a person in this state to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request on assurance by the other state that state travel and other necessary expenses will be advanced or reimbursed.

[Acts 1983, 68th Leg., p. 691, ch. 160, § 1, eff. Sept. 1, 1983.]

§ 11.71. Preservation of Documents for Use in Other States

In any custody proceeding in this state, the court shall preserve the pleadings, orders, and decrees, any record that has been made of its hearings, social studies, and other pertinent documents until the child reaches 18 years of age or in accordance with the law of this state. On appropriate request of the court of another state and payment of proper fees, the court shall forward to the other court certified copies of the documents.

[Acts 1983, 68th Leg., p. 691, ch. 160, § 1, eff. Sept. 1, 1983.]

§ 11.72. Request for Court Records of Another State

If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this state, the court of this state on taking jurisdiction of the case may request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in Section 11.71 of this code.

[Acts 1983, 68th Leg., p. 691, ch. 160, § 1, eff. Sept. 1, 1983.]

§ 11.73. International Application

The general policies of this subchapter extend to the international area. The provisions of this subchapter relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody institutions rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard were given to all affected persons.

[Acts 1983, 68th Leg., p. 691, ch. 160, § 1, eff. Sept. 1, 1983.]

§ 11.74. Priority

On the request of a party to a custody proceeding that raises a question of existence or exercise of jurisdiction under this subchapter, the case shall be given calendar priority and handled expeditiously.

[Acts 1983, 68th Leg., p. 691, ch. 160, § 1, eff. Sept. 1, 1983.]

§ 11.75. Short Title

This subchapter may be cited as the Uniform Child Custody Jurisdiction Act.

[Acts 1983, 68th Leg., p. 691, ch. 160, § 1, eff. Sept. 1, 1983.]

CHAPTER 12. THE PARENT-CHILD RELATIONSHIP

Sec.

§ 12.01. Relation of Child to Mother

A child is the legitimate child of his mother.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 12.02. Relation of Child to Father

(a) A child is the legitimate child of his father if the child is born or conceived before or during the marriage of his father and mother.

(b) A child is the legitimate child of his father if at any time his mother and father have attempted to marry in apparent compliance with the laws of this state or another state or nation, although the attempted marriage is or might be declared void, and the child is born or conceived before or during the attempted marriage.

(c) A child is the legitimate child of a man if the man's paternity is established under the provisions of Chapter 13 of this code.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1260, ch. 476, § 22, eff. Sept. 1, 1975.]

§ 12.03. Artificial Insemination

(a) If a husband consents to the artificial insemination of his wife, any resulting child is the legitimate child of both of them. The consent must be in writing and must be acknowledged.

(b) If a woman is artificially inseminated, the resulting child is not the child of the donor unless he is the husband.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 12.04. Rights, Privileges, Duties, and Powers of Parent

Except as otherwise provided by judicial order or by an affidavit of relinquishment of parental rights executed under Section 15.03 of this code, the parent of a child has the following rights, privileges, duties, and powers:

(1) the right to have physical possession of the child and to establish its legal domicile;

(2) the duty of care, control, protection, moral and religious training, and reasonable discipline of the child;

(3) the duty to support the child, including providing the child with clothing, food, shelter, medical care, and education;

(4) the duty, except when a guardian of the child's estate has been appointed, to manage the estate of the child, including a power as an agent of the child to act in relation to the child's estate if the child's action is required by a state, the United States, or a foreign government;

(5) the right to the services and earnings of the child;

(6) the power to consent to marriage, to enlistment in the armed forces of the United States, and to medical, psychiatric, and surgical treatment;

(7) the power to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;

(8) the power to receive and give receipt for payments for the support of the child and to hold or disburse any funds for the benefit of the child;

(9) the right to inherit from and through the child; and

(10) any other right, privilege, duty, or power existing between a parent and child by virtue of law.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1260, ch. 476, § 23, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 5436, ch. 1016, § 1, eff. June 19, 1983.]

§ 12.05. Rights of a Living Child After an Abortion or Premature Birth

(a) A living human child born alive after an abortion or premature birth is entitled to the same rights, powers, and privileges as are granted by the laws of this state to any other child born alive after the normal gestation period.

(b) In this code, "born alive" means the complete expulsion or extraction from its mother of a product of conception, irrespective of the duration of pregnancy, which, after such separation, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached; each product of such a birth is considered born alive.

[Acts 1979, 66th Leg., p. 1192, ch. 580, § 1, eff. June 13, 1979.]

Acts 1979, 66th Leg., ch. 580, § 4, provided:

"This Act does not affect the standard of care required of a physician in the performance of medical practice."

§ 12.06. Denial of Paternity

(a) In any suit affecting the parent-child relationship, other than a suit under Chapter 13 of this code, a man is entitled to deny his paternity of the child who is the subject of the suit and who was born or conceived during the marriage of the man and the mother of the child. The question of paternity under this section must be raised by an express statement denying paternity of the child in the man's pleadings in the suit, without regard to whether the man is a petitioner or respondent.

(b) In any suit in which a question of paternity is raised under this section, the court shall conduct the pretrial proceedings and order the blood tests as required in a suit under Chapter 13 of this code.

(c) In any suit in which a question of paternity is raised under this section, the man who is denying his paternity of the child has the burden of establishing that the man is not the father of the child.

[Acts 1983, 68th Leg., p. 2355, ch. 424, § 7, eff. Sept. 1, 1983.]

CHAPTER 13. DETERMINATION OF PATERNITY

Former Chapter 13, Voluntary Legitimation, consisting of Sections 13.01 to 13.06, was revised and amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, to read, Determination of Paternity, Sections 13.01 to 13.43. The provisions of former Chapter 13 are now found in Subchapters B and C herein, Sections 13.21 to 13.24, 13.42 and 13.43.

SUBCHAPTER A. PATERNITY SUIT

Sec.
13.01. Time Limitation of Suit.
13.02. Pretrial Proceedings: Blood Tests.
13.03. Pretrial Proceedings: Appointment of Experts.
13.04. Pretrial Proceedings: Conference.
13.05. Pretrial Proceedings: Effect of Blood Tests.
13.06. Evidence at Trial.
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SUBCHAPTER B. VOLUNTARY LEGITIMATION

13.21. Voluntary Legitimation.
13.22. Statement of Paternity.
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SUBCHAPTER C. GENERAL PROVISIONS

13.41. Venue.
13.42. Conservatorship, Support, Fees, and Payments.
13.43. Birth Certificate.

SUBCHAPTER A. PATERNITY SUIT

§ 13.01. Time Limitation of Suit

A suit to establish the parent-child relationship between a child who is not the legitimate child of a man and the child's natural father by proof of paternity must be brought on or before the second anniversary of the day the child becomes an adult, or the suit is barred.

[Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2537, ch. 674, § 2, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 4530, ch. 744, § 1, eff. June 19, 1983.]

Section 2 of the 1983 amendatory act provides:

"A cause of action that was barred before the effective date of this Act but would not have been barred by Section 13.01, Family Code, as amended by this Act, is not barred until the period of limitations provided by Section 13.01, Family Code, as amended by this Act, has expired."

§ 13.02. Pretrial Proceedings: Blood Tests

(a) When the respondent appears in a paternity suit, the court shall order the mother, alleged father, and child to submit to the taking of blood for the purpose of one or more blood tests. If the appearance is before the birth of the child, the court shall order the taking of blood to be made as soon as medically practical after the birth.

(b) An order issued under this section is enforceable by contempt, except that if the petitioner is the mother or the alleged father and refuses to submit to the blood test, the court shall dismiss the suit. If the respondent is the mother or the alleged father and refuses to submit to the blood test, the fact of refusal may be introduced as evidence as provided in Section 13.06(d) of this code.

[Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1023, ch. 455, § 1, eff. Aug. 27, 1979.]

§ 13.03. Pretrial Proceedings: Appointment of Experts

(a) The court may appoint one or more experts qualified as examiners of blood types to make the blood tests. The court may determine the number and qualifications of the experts and shall prescribe the arrangements for conducting the tests.

(b) The court may fix a reasonable fee for each court-appointed examiner and may require the fee to be paid by any or all of the parties or by the Texas Department of Human Resources, if the department is a party of the suit, in the amounts and in the manner directed, or the court may tax all or part or none of the fee as costs in the suit.

(c) A party may employ other qualified examiners of blood tests. The court may order blood samples made available to these examiners if requested.

[Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1023, ch. 455, § 2, eff. Aug. 27, 1979.]

§ 13.04. Pretrial Proceedings: Conference

(a) After completion of the blood tests, the court shall order all parties to appear, either in person or by counsel, at a pretrial conference. The court shall call its appointed examiners to testify in person or by deposition about their tests and findings. A party may call other qualified examiners of blood tests to testify.

(b) Witnesses called by the court are the court's witnesses, and witnesses called by a party are that party's witnesses. The court and the parties may examine and cross-examine all witnesses.

(c) All evidence presented at the pretrial conference is a part of the record of the case.

[Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.05. Pretrial Proceedings: Effect of Blood Tests

(a) At the conclusion of the pretrial conference, if the court finds that the tests show by clear and convincing evidence that the alleged father is not the father of the child, the court shall dismiss the suit with prejudice.

(b) If the court finds that the blood tests fail to show by clear and convincing evidence the alleged father is not the father of the child, the court shall set the suit for trial.

[Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.06. Evidence at Trial

(a) Unless otherwise permitted by the court on a showing of good cause, a party may call to testify on the results of the blood tests only those experts who testified at the pretrial conference.

(b) A witness called by a party at the trial is that party's witness.

(c) If the blood tests show the possibility of the alleged father's paternity, the court may admit this evidence if offered at the trial.

(d) Evidence of a refusal by the respondent to submit to a blood test is admissible to show only that the alleged father is not precluded from being the father of the child.

[Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.07. Settlement

The child must be a party to a settlement agreement with the alleged father. The child shall be represented in the settlement agreement by a guardian ad litem appointed by the court. The court must approve any settlement agreement, dismissal, or nonsuit.

[Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.08. Decree

(a) On a verdict of the jury, or on a finding of the court if there is no jury, that the alleged father is the father of the child, the court shall issue an order designating the alleged father as the father of the child.

(b) On a verdict of the jury, or on a finding of the court if there is no jury, that the alleged father is not the father of the child, the court shall issue an order declaring this finding.

[Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.09. Effect of Decree Establishing Paternity

The effect of a decree designating the alleged father as the father of the child is to create the parent-child relationship between the father and the child as if the child were born to the father and mother during marriage.

[Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

[Sections 13.10 to 13.20 reserved for expansion]

SUBCHAPTER B. VOLUNTARY LEGITIMATION

§ 13.21. Voluntary Legitimation

(a) If a statement of paternity has been executed by the father of an illegitimate child, the father or mother of the child or the Texas Department of Human Resources may file a petition for a decree designating the father as a parent of the child. The statement of paternity must be attached to the petition.

(b) The court shall enter a decree designating the child as the legitimate child of its father and the father as a parent of the child if the court finds that:

(1) the parent-child relationship between the child and its original mother has not been terminated by a decree of a court;

(2) the statement of paternity was executed as provided in this chapter, and the facts stated therein are true; and

(3) the mother or the managing conservator, if any, has consented to the decree.

(c) The requirement of consent of the mother is satisfied if she is the petitioner. If the entry of the decree is in the best interest of the child, the court may consent to the legitimation of the child in lieu of the consent of the mother or managing conservator.

(d) A suit for voluntary legitimation may be joined with a suit for termination under Chapter 15 of this code.[1]

(e) A suit under this section may be instituted at any time.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 2270, ch. 551, § 5, eff. Aug. 31, 1981.]

[1] Section 15.01 et seq.

§ 13.22. Statement of Paternity

The statement of paternity authorized to be used in Section 13.21 of this code must be executed by the father of the child as an affidavit and witnessed by two credible adults. The affidavit must clearly state that the father acknowledges the child as his child, that he and the mother, who is named in the affidavit, were not married to each other at the time of conception of the child or at any subsequent time, and that the child is not the legitimate child of another man. The statement must be executed before a person authorized to administer oaths under the laws of this state.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.23. Effect of Statement of Paternity

(a) A statement of paternity executed as provided in Section 13.22 of this code is prima facie evidence that the child is the child of the person executing the statement and that the person has an obligation to support the child.

(b) If the father's address is unknown or he is outside the jurisdiction of the court at the time a suit is instituted under Section 13.21 of this code, his statement of paternity, in the absence of controverting evidence, is sufficient for the court to enter a decree establishing his paternity of the child.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.24. Validation of Prior Statements

A statement acknowledging paternity or an obligation to support a child which was signed by the father before January 1, 1974, is valid and binding even though the statement is not executed as provided in Section 13.22 of this code and is not filed with the State Department of Public Welfare or with the court.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

[Sections 13.25 to 13.40 reserved for expansion]

SUBCHAPTER C. GENERAL PROVISIONS

§ 13.41. Venue

(a) If the alleged father is not the petitioner, the suit shall be brought in the county where the alleged father resides, except that if the alleged father is not a resident or domiciliary of this state and jurisdiction is to be established as provided by Section 11.051 of this code, the suit shall be brought where the mother resides.

(b) If the alleged father is the petitioner, the suit shall be brought in the county where the mother resides, except that if the mother is not a domiciliary of this state and jurisdiction is to be established as provided by Section 11.051 of this code, the suit shall be brought where the child resides.

[Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.42. Conservatorship, Support, Fees, and Payments

(a) In a suit in which a determination of paternity is sought, the court may provide for the managing and possessory conservatorship and support of and access to the child; except that no alleged father denying paternity may be required to make any payment for the support of the child until paternity is established.

(b) In addition to the payment authorized by Section 14.05 of this code, the court may award reasonable attorney's fees incurred in the suit.

(c) A payment ordered under Subsection (b) of this section is enforceable as provided in Section 14.09 of this code.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.43. Birth Certificate

On a determination of paternity, the clerk of the court, unless directed otherwise by the court, shall transmit a copy of the decree to the State Registrar of Vital Statistics. The decree shall state the name of the child. The registrar shall substitute for the original a new birth certificate based on the decree in accordance with the provisions of the laws which permit the correction or substitution of birth certificates for adopted children or children legitimated by the subsequent marriage of their parents and in accordance with the rules and regulations promulgated by the State Department of Health.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

CHAPTER 14. CONSERVATORSHIP, POSSESSION AND SUPPORT OF CHILDREN

Sec.

§ 14.01. Court Appointment of Managing Conservator

(a) In any suit affecting the parent-child relationship, the court may appoint a managing conservator, who must be a suitable, competent adult, or a parent, or an authorized agency. If the court finds that the parents are or will be separated, the court shall appoint a managing conservator.

(b) A parent shall be appointed managing conservator of the child unless the court finds that appointment of the parent would not be in the best interest of the child. In determining which parent to appoint as managing conservator, the court shall consider the qualifications of the respective parents without regard to the sex of the parent.

(c) A qualified person or authorized agency designated managing conservator of the child in an unrevoked or irrevocable affidavit of relinquishment of parental rights executed pursuant to Section 15.03 of this code shall be appointed managing conservator of the child unless the court finds that appointment of the person or agency would not be in the best interest of the child.

(d) A person appointed managing conservator who is not a parent of the child shall each 12 months after his appointment file with the court a report of facts concerning the child's welfare, including his whereabouts and physical condition. The report may not be admitted in evidence in any subsequent suit affecting the parent-child relationship.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 14.02. Rights, Privileges, Duties, and Powers of Managing Conservator

(a) Except as provided in Subsection (d) of this section, a parent appointed managing conservator of the child retains all the rights, privileges, duties, and powers of a parent to the exclusion of the other

parent, subject to the rights, privileges, duties, and powers of a possessory conservator as provided in Section 14.04 of this code and to any limitation imposed by court order in allowing access to the child.

(b) A managing conservator who is not the parent of the child has the following rights, privileges, duties, and powers, subject to the rights, privileges, duties, and powers of a possessory conservator as provided in Section 14.04 of this code and to any limitation imposed by court order in allowing access to the child:

(1) the right to have physical possession of the child and to establish its legal domicile;

(2) the duty of care, control, protection, moral and religious training, and reasonable discipline of the child;

(3) the duty to provide the child with clothing, food, shelter, and education;

(4) the right to the services and earnings of the child;

(5) the power to consent to marriage, to enlistment in the armed forces of the United States, and to medical, psychiatric, and surgical treatment;

(6) the power to represent the child in legal action and to make other decisions of substantial legal significance concerning the child including, except when a guardian of the child's estate or a guardian or attorney ad litem has been appointed for the child, a power as an agent of the child to act in relation to the child's estate if the child's action is required by a state, the United States, or a foreign government;

(7) the power to receive and give receipt for periodic payments for the support of the child and to hold or disburse these funds for the benefit of the child; and

(8) if the parent-child relationship has been terminated with respect to the parents, or only living parent, or if there is no living parent, the power to consent to the adoption of the child and to make any other decision concerning the child that a parent could make.

(c) A person or authorized agency designated managing conservator of a child in an affidavit of relinquishment executed pursuant to Section 15.03 of this code shall have the rights, privileges, duties, and powers given by Section 14.04 of this code to a possessory conservator until such time as these rights, privileges, duties, and powers are modified or terminated by court order.

(d) The appointment of a managing conservator does not create, rescind, or otherwise alter a right to inherit as established by law or as modified under Chapter 15 of this code.[1]

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1265, ch. 476, §§ 25, 26, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 5437, ch. 1016, § 2, eff. June 19, 1983.]

[1] Section 15.01 et seq.

§ 14.03. Possession of and Access to Child

(a) If a managing conservator is appointed, the court may appoint one or more possessory conservators and set the time and conditions for possession of or access to the child by the possessory conservators and others. If ordered, the times and conditions for possession of or access to the child must be specific and expressly stated in the order, unless either party shows good cause why specific orders would not be in the best interest of the child.

(b) The court by local rule may establish and publish schedules, guidelines, and formulas for use in determining the times and conditions for possession of and access to a child.

(c) On the appointment of a possessory conservator, the court shall prescribe the rights, privileges, duties, and powers of the possessory conservator.

(d) The court may not deny possession of or access to a child to either or both parents unless it finds that parental possession or access is not in the best interest of the child and that parental possession or access would endanger the physical or emotional welfare of the child.

Text of subsec. (e) [former (d)] as amended by Acts 1983, 68th Leg., p. 1608, ch. 304, § 1.

(e) In a suit affecting the parent-child relationship, including a suit brought for the sole purpose of seeking the relief authorized by this subsection and including a proceeding for the modification of a previous order, and without regard to whether or not the appointment of a managing conservator is an issue in the suit, the court may issue and enforce orders granting to a grandparent of the child reasonable access to the child if a parent of the child is, at the time that the relief is requested, a natural parent of the child, if access to the grandparent is in the best interest of the child, and if:

(1) the grandparent seeking access to the child is a parent of a parent of the child and that parent of the child has been incarcerated in jail or prison during the three-month period preceding the filing of the petition or has been found by a court to be incompetent or is dead; or

(2) the parents of the child are divorced or have been living apart for the three-month period preceding the filing of the petition or a suit for the dissolution of the parents' marriage is pending; or

(3) the child has been abused or neglected by a parent of the child; or

(4) the child has been adjudicated to be a child in need of supervision or a delinquent child under Title 3 of this code;[1] or

(5) the grandparent seeking access to the child is the parent of a person whose parent-child relationship with the child has been terminated by court decree; or

(6) the child has resided with the grandparent seeking access to the child for at least six months within the 24-month period preceding the filing of the petition.

Text of subsec. (e) [former (d)] as amended by Acts 1983, 68th Leg., p. 2174, ch. 402, § 4.

(e) If the court finds that it is in the best interests of the child as provided in Section 14.07 of this code, the court may grant reasonable access rights to either the maternal or paternal grandparents of the child; and to either the natural maternal or paternal grandparents of a child whose parent-child relationship has been terminated or who has been adopted before or after the effective date of this code. This relief may not be granted unless one of the child's legal parents at the time the relief is requested is the child's natural parent. The court may issue any necessary orders to enforce the decree.

Text of subsec. (e) as added by Acts 1983, 68th Leg., p. 1728, ch. 328, § 2.

(e) In any decree providing for possessory interests in a child the court may, if it finds that it is in the best interests of the child because of a history of conflicts and difficulties in resolving the issue of conservatorship or possession of or access to the child, order any party to participate in counseling with persons appointed or approved by the court for the purpose of facilitating compliance with the court order. The court may order the party to pay the costs of counseling.

(f) On the motion of any party or on the court's own motion, the court may order any person who has possessory interests in a child, and who the court finds may violate the court order relating to the possessory interests in a child, to file a bond or to place security with the court in an amount set by the court and conditioned on the faithful performance of the person's duties and obligations under the court order with respect to the possessory interests in a child.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1265, ch. 476, § 27, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 335, ch. 164, § 1, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 1608, ch. 304, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 1728, ch. 328, § 2, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 2174, ch. 402, § 4, eff. June 17, 1983.]

[1] Section 51.01 et seq.

§ 14.031. Notice of Change of Residence

(a) Each decree that provides for the appointment of a possessory conservator who has possession of or access to a child shall include, and in its absence shall be deemed to include, the requirement that the managing conservator and each possessory conservator who intend a change of place of residence must give written notice of the intended date of change and new address of residence to every other party who has possession of or access to the child. The notice must be given on or before 30 days before the conservator changes the conservator's place of residence or, if the conservator did not know or could not have known of the change within the 30-day period, on the first day that the conservator knew or should have known of the change.

(b) The court may waive the notice required by this section upon motion by the moving conservator if it finds that the giving of notice of a change of place of residence would be likely to expose the child or the conservator to abuse or injury.

(c) The notice required by this section may be served by delivery of a copy of the notice to the party to be served either in person or by registered or certified mail, return receipt requested, to the last known address of the party to be served.

[Acts 1983, 68th Leg., p. 2356, ch. 424, § 8, eff. Sept. 1, 1983.]

§ 14.04. Rights, Privileges, Duties, and Powers of Possessory Conservator

(a) A possessory conservator has the following rights, privileges, duties, and powers during the period of possession, subject to any limitations expressed in the decree:

(1) the duty of care, control, protection, and reasonable discipline of the child;

(2) the duty to provide the child with clothing, food, and shelter; and

(3) the power to consent to medical and surgical treatment during an emergency involving an immediate danger to the health and safety of the child.

(b) A possessory conservator has any other right, privilege, duty, or power of a managing conservator expressly granted to the possessory conservator in the decree awarding possession of the child.

(c) A possessory conservator has the right of access to medical, dental, and educational records of the child to the same extent as the managing conservator. The custodian of records shall delete all references in the records to the place of residence of the managing conservator of the child prior to their release to the possessory conservator.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1981, 67th Leg., p. 944, ch. 355, § 4, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 745, ch. 176, § 1, eff. May 20, 1983.]

§ 14.05. Support of Child

(a) The court may order either or both parents to make periodic payments or a lump-sum payment, or both, for the support of the child until he is 18 years of age in the manner and to the persons specified by the court in the decree. In addition, the court may order a parent obligated to support a child to set aside property to be administered for the support of

the child in the manner and by the persons specified by the court in the decree. In determining the amount of child support, the court shall consider all appropriate factors, including but not limited to the needs of the child, the ability of the parents to contribute to the child's support, any financial resources available for the support of the child, and any schedules, guidelines, and formulas adopted by the court. The court by local rule may establish and publish schedules, guidelines, and formulas to be used by the court in determining the amount and manner of child support.

(b) If the court finds that the child, whether institutionalized or not, requires continuous care and personal supervision because of a mental or physical disability and will not be able to support himself, the court may order that payments for the support of the child shall be continued after the 18th birthday and extended for an indefinite period.

(c) The court may order the trustees of a spendthrift or other trust to make disbursements for the support of the child to the extent the trustees are required to make payments to a beneficiary who is required to make support payments under this section. If disbursement of the assets of the trust is discretionary in the trustees, the court may order payments for the benefit of the child from the income of the trust, but not from the principal.

(d) Unless otherwise agreed to in writing or expressly provided in the decree, provisions for the support of a child are terminated by the marriage of the child, the removal of the child's disabilities for general purposes, or the death of a parent obligated to support the child.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 2175, ch. 402, § 5, eff. June 17, 1983.]

§ 14.06. Agreements Concerning Conservatorship

(a) To promote the amicable settlement of disputes between the parties to a suit under this chapter, the parties may enter into a written agreement containing provisions for conservatorship and support of the child, modifications of agreements or orders providing for conservatorship and support of the child, and appointment of joint managing conservators.

(b) If the court finds the agreement is not in the child's best interest the court may request the parties to submit a revised agreement or the court may make orders for the conservatorship and support of the child.

(c) If the court finds that the agreement is in the child's best interest, its terms shall be set forth in the decree and the parties shall be ordered to perform them.

(d) Terms of the agreement set forth in the decree may be enforced by all remedies available for enforcement of a judgment, including contempt, but are not enforceable as contract terms unless the agreement so provides.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1979, 66th Leg., p. 717, ch. 313, § 1, eff. Aug. 27, 1979.]

§ 14.07. Best Interest of Child

(a) The best interest of the child shall always be the primary consideration of the court in determining questions of managing conservatorship, possession, and support of and access to the child. If the child is 14 years of age or older, he may, by writing filed with the court, choose the managing conservator, subject to the approval of the court.

(b) In determining the best interest of the child, the court shall consider the circumstances of the parents. In the event of the death of the parents, the grandparents may be considered but such consideration shall not alter or diminish the discretionary power of the court.

(c) In a nonjury trial the court may interview the child in chambers to ascertain the child's wishes as to his conservator. Upon the application of any party and when the issue of managing conservatorship is contested, the court shall confer with a child 12 years of age or older and may confer with a child under 12 years of age, but in either event the results of such interview shall not alter or diminish the discretionary power of the court. The court may permit counsel to be present at the interview. On the motion of a party or on the court's own motion, the court shall cause a record of the interview to be made when the child is 12 years of age or older, which record of the interview shall be made part of the record in the case.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1265, ch. 476, § 28, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1862, ch. 739, § 1, eff. Aug. 29, 1977.]

§ 14.08. Modification of Order

(a) A court order or the portion of a decree that provides for the support of a child or the appointment of a conservator or that sets the terms and conditions of conservatorship for, support for, or access to a child may be modified only by the filing of a motion in the court having continuing, exclusive jurisdiction of the suit affecting the parent-child relationship as provided by Section 11.05 of this code. Any party affected by the order or the portion of the decree to be modified may file the motion.

(b) Each party whose rights, privileges, duties, or powers may be affected by the motion is entitled to at least 30 days' notice of a hearing on the motion to modify.

(c) After a hearing, the court may modify an order or portion of a decree that:

(1) designates a managing conservator if:

(A) the circumstances of the child, managing conservator, possessory conservator, or other party affected by the order or decree have materially and substantially changed since the entry of the order or decree to be modified; and

(B) the retention of the present managing conservator would be injurious to the welfare of the child; and

(C) the appointment of the new managing conservator would be a positive improvement for the child; or

(D) the managing conservator has voluntarily relinquished possession and control of the child for a period of more than 12 months and the modification is in the best interest of the child; or

(2) provides for the support of a child if the circumstances of the child or a person affected by the order or portion of the decree to be modified have materially and substantially changed since its entry, except that a support order may be modified only as to obligations accruing subsequent to the motion to modify; or

(3) sets the terms and conditions for possession of or access to a child, or prescribes the relative rights, privileges, duties, and powers of conservators if:

(A) the circumstances of the child or a person affected by the order or portion of the decree to be modified have materially and substantially changed since the entry of the order or decree; or

(B) the order or portion of the decree to be modified has become unworkable or inappropriate under existing circumstances; or

(C) the notice required by Section 14.031 of this code was not given, or there was a change in a conservator's residence to a place outside the jurisdiction of the court. If a change of residence results in increased expenses for any party having possession of or access to a child, the court may enter appropriate orders to allocate those increased costs on a fair and equitable basis, taking into account the cause of the increased costs and the best interests of the child. Such an order may be entered without regard to whether any other change in the terms and conditions of possession of or access to the child is made.

(d) If the motion is filed for the purpose of changing the designation of the managing conservator and is filed within one year after the date of issuance of the order or decree to be modified, there shall be attached to the motion an affidavit executed by the person making the motion. The affidavit must contain at least one of the following allegations along with the supportive facts:

(1) that the child's present environment may endanger his physical health or significantly impair his emotional development; or

(2) that the managing conservator is the person seeking the modification or consents to the modification, and the modification is in the best interest of the child.

(e) On the filing of a motion to which the provisions of Subsection (d) of this section apply, the court shall deny the motion and refuse to schedule a hearing unless the court determines, on the basis of the affidavit, that adequate facts to support an allegation listed in Subdivision (1) or (2) of Subsection (d) of this section are stated in the affidavit. If the court determines that the facts stated are adequate to support an allegation, a time and place for the hearing shall be set.

(f) If a petition for further action is filed for the purpose of changing the designation of the managing conservator, after a hearing the court may enter the order only if the standards established by this section for modification of the prior order or decree have been met.

(g) While a motion to modify or a petition for further action is pending, the court may not issue temporary orders under Section 11.11 of this code that have the effect of changing the designation of the managing conservator unless the order is necessary because there is a serious, immediate question concerning the welfare of the child.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1265, ch. 476, § 29, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 708, ch. 160, § 8, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 2354, ch. 424, §§ 6, 9, eff. Sept. 1, 1983.]

§ 14.09. Enforcement of Order

(a) Any order of the court may be enforced by contempt.

(b) A court may enforce an order for support as provided in Rule 308A of the Texas Rules of Civil Procedure or any subsequent version of the rule promulgated by the supreme court.

(c) On the motion of any party entitled to receive payments for the benefit of a child, the court may render judgment against a defaulting party for any amount unpaid and owing after 10 days' notice to the defaulting party of his failure or refusal to carry out the terms of the order. The judgment may be enforced by any means available for the enforcement of judgments for debts.

(d) A parent may be compelled to testify fully in regard to his ability to support the child.

Text of subsec. (e) as added by Acts 1983, 68th Leg., p. 1729, ch. 328, § 3

(e) A suit for damages under Chapter 36 of this code may be joined with any proceeding under this

section for the enforcement of a court order relating to the possession of or access to a child.

Text of subsec. (e) as added by Acts 1983, 68th Leg., p. 2173, ch. 402, § 3

(e) If a self-employed person, or a person employed by an employer not subject to the jurisdiction of the court, or a person to whom the application of Sec. 14.091 is impracticable fails to make two or more child support payments as required by court order, the court, in addition to other remedies provided by this chapter, may order the person to execute a bond, subject to the approval of the court, or pay security to the court, the bond or security to be conditioned on the payment of past-due and future child support payments as required by the court order. If the person fails to make a child support payment as required by the court order after having executed a bond or having paid security to the court, the court may collect on the bond or may forfeit all or a portion of the security. An amount collected from a bond or an amount of forfeited security shall be paid to the person entitled to receive the support payment for the benefit of the child and shall be applied to the outstanding indebtedness of the person. The application of bond or security funds to the person's indebtedness is not a defense in a contempt of court proceeding. In this subsection, "self-employed person" means an individual who received 80 percent or more of his annual income from sources other than wages or salary.

Text of subsec. (e) as added by Acts 1983, 68th Leg., p. 2358, ch. 424, § 10

(e) If the managing conservator has voluntarily relinquished to a possessory conservator under court order to pay child support the actual care, control, and possession of a child in excess of the court-ordered periods of possession of and access to the child, the possessory conservator may affirmatively plead and prove the fact that he or she has supplied actual support to the child as a defense in whole or part to a motion for contempt for failure to make periodic payments according to the terms of a court order.

(f) If the managing conservator has voluntarily relinquished to another person, including a possessory conservator under court order to pay child support, the actual care, control, and possession of a child in excess of the court-ordered periods of possession of and access to the child, the child support order continues unabated until further order of the court as provided by Section 14.08 of this code. Child support arrears may be reduced to money judgment and the support order may not be retroactively modified. However, a possessory conservator who has provided actual support to the child during such periods may seek reimbursement for that support as a counterclaim or off-set against the claim of the managing conservator. An action for support supplied to a child against the managing conservator shall be limited to the amount of periodic payments previously ordered by the court.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 1729, ch. 328, § 3, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 2173, ch. 402, § 3, eff. June 17, 1983; Acts 1983, 68th Leg., p. 2358, ch. 424, § 10, eff. Sept. 1, 1983.]

§ 14.091. Assignment of Income for Child Support

(a) A person ordered by a court to make child support payments may voluntarily assign a portion of his earnings for the payment of support by filing a signed assignment with the court having jurisdiction of the suit.

(b) An assignment shall state the style, docket number, and court having continuing jurisdiction of the suit, the name, address, and social security number of the assignor, the name and address of the assignor's employer, the amount and duration of the assignment, the name, address, and, if available, the social security number of the child and the person entitled to receive payment for the support of the child, and any other matter deemed necessary to effectuate the assignment.

(c) On motion of any party to a suit in which an assignment has been filed, the court may, after notice to all parties to the suit and a hearing, order any employer named in the assignment to withhold from the assignor's disposable earnings the lesser of either the amount specified in the assignment or up to one-third of assignor's disposable earnings.

(d) Any order for an assignment shall have a copy of the assignment attached to it. The order shall contain the amount and duration of the assignment, the name and address of the person or office to which the assigned amount shall be delivered, the notices required by Subsections (h) and (i) of this section, a requirement that the assignor promptly notify the court of any change affecting the assignment, and any other matter deemed necessary by the court. The court shall require the assigned amount to be paid to the court registry or a child support collection office serving the court, unless the court finds there is good cause to require payments to be made to another person or office. An order for assignment shall dissolve without court action 30 days after the employee ceases employment with the employer.

(e) The assignment becomes effective 15 days after service of the order upon the employer. Service of the order shall be issued and served as in other civil cases, including by certified or registered mail, return receipt requested. After the effective date, the assigned amount, less any administrative

fee, shall be remitted to the person or office named in the order on each regular due date or pay date. The employer may deduct from the assigned amount an administrative fee of not more than $5.00 per month.

(f) At any time after service of the order, the employer may make a motion for hearing on the validity and application of the assignment. The hearing shall be held within 15 days following the filing of the motion. Pending the hearing, the assignment remains binding unless otherwise ordered by the court, but payments of the amount assigned shall be made to the registry of the court.

(g) An assignment made under this section has priority over any garnishment, attachment, execution, or other assignment or order unless otherwise ordered by the court or provided by law.

(h) An employer served with an order under this section who complies with the order is not liable to the assignor for the amount of disposable earnings withheld and paid as provided in the order. An employer who does not comply with the order is liable to the person entitled to receive the support for the amount not paid in compliance with the order and for reasonable attorney's fees and court costs. Each order must include notice of this provision. An employer served with two or more orders on any named assignor shall comply with all orders. If the total amount in the orders exceeds the maximum amount allowable under this section, the employer shall pay equal amounts on all orders until the orders are individually complied with or until the maximum amount of allowable assignment is reached, whichever occurs first.

(i) An employer may not use an assignment authorized by this section as grounds in whole or part for the termination of employment or for any other disciplinary action against an employee. An employer may not refuse to hire an employee because of an assignment. If an employer intentionally discharges an employee in violation of this subsection, the employer continues to be liable to the employee for current wages and other benefits, and for reasonable attorney's fees and court costs incurred by the employee in enforcing the employee's rights under this subsection. An action under this subsection may be brought only by the employee. Each order must include notice of this provision.

(j) A court with continuing jurisdiction over a parent-child relationship shall consider the fact that an assignor is subject to two or more income assignments. Upon motion by any party to the suit, or upon the court's own motion, the court may, after notice to all parties to the suit and a hearing, modify an assignment under this section for the purpose of making new assignments for the benefit of all of the children whom the assignor is obligated to support, in order to avoid assigning more than the maximum amount permitted under this section. In the event a dispute arises between two or more courts over assignments involving the same assignor, the court which first acquired jurisdiction shall resolve the dispute.

(k) In this section, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(*l*) In this section, "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

(m) In this section, "employer" means any person, including the United States and any governmental entity as defined by Section 11.01 of this code. "Person" shall include, but is not limited to, individuals, partnerships, and corporations.

(n) Hearings under this section may be joined with any other hearing in the suit affecting the parent-child relationship; provided, however, a court may not order an assignment in any temporary proceeding affecting the parent-child relationship.

(*o*) Nothing in this section shall be construed to limit the use of any and all other civil or criminal remedies to enforce child support obligations.

(p) Involuntary Assignment of Earnings

(1) The court of continuing jurisdiction may order an involuntary assignment of earnings for child support upon proper motion, notice to all parties, and a hearing.

(2) An involuntary assignment of earnings may be ordered if the court finds that the total amount of child support in arrears was equal to or in excess of the amount due for a two-month period at the time the motion for involuntary assignment was filed with the court.

(3) In determining the amount of the assignment, the court may consider, in addition to other relevant factors, the amount of support in arrears as well as the amount of payments to become due in the future.

(4) A motion for an involuntary assignment of earnings may be filed by:

(A) the person entitled to receive support for the benefit of a child;

(B) the attorney general if the state is providing assistance to or services for the child; or

(C) the court of continuing jurisdiction.

(5) An assignment ordered under this subsection shall be subject to all other provisions of this section.

(q) If a court orders an assignment it may award reasonable attorney's fees and court costs to the party who requested the assignment.

[Acts 1983, 68th Leg., p. 2169, ch. 402, §§ 1, 2, eff. June 17, 1983; Acts 1983.]

Section 6 of the 1983 Act provides:

"This Act takes effect immediately, except that Section 2 [adding subsecs. (p) and (q)] takes effect on adoption of the constitutional amendment proposed by H.J.R. No. 1, 68th Legislature, Regular Session, 1983."

Acts 1983, 68th Leg., p. 6693, H.J.R. No. 1, was approved by the voters at an election held November 8, 1983.

§ 14.10. Habeas Corpus

(a) If the right to possession of a child is presently governed by a court order, the court in a habeas corpus proceeding involving the right to possession of the child shall compel return of the child to the relator if and only if it finds that the relator is presently entitled to possession by virtue of the court order.

(b) The court shall disregard any cross action or motion pending for modification of the decree determining managing conservatorship, possession, or support of or access to the child unless it finds that:

(1) the previous order was granted by a court that did not give the contestants reasonable notice of the proceeding and an opportunity to be heard; or

(2) the child has not been in the relator's possession and control for at least 6 months immediately preceding the filing of the petition for the writ.

(c) The court may issue any appropriate temporary order if there is a serious immediate question concerning the welfare of the child.

(d) While in this state for the sole purpose of compelling the return of a child through a habeas corpus proceeding, the relator is not amenable to civil process and is not subject to the jurisdiction of any civil court except the court in which the writ is pending and in that court only for the purpose of prosecuting the writ.

(e) If the right to possession of a child is not governed by a court order, the court in a habeas corpus proceeding involving the right of possession of the child shall compel return of the child to the relator if, and only if, it finds that the relator has a superior right to possession of the child by virtue of the rights, privileges, duties, and powers of a parent as set forth in Section 12.04 of this code.

(f) The court shall disregard any motion for temporary or permanent adjudication relating to the possession of the child in a habeas corpus proceeding brought under Subsection (e) of this section unless at the time of the hearing an action is pending under this subtitle, in which case the court may proceed to issue any temporary order as provided by Section 11.11 of this code.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1266, ch. 476, § 30, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1290, ch. 508, § 1, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 708, ch. 160, § 9, eff. Sept. 1, 1983.]

§ 14.11. [Blank]

§ 14.12. Probation of Contempt Order

(a) If the court finds that a person who has been ordered to make payments for the support of a child is in contempt of the court for the failure or refusal to make a payment, the court may suspend the imposition of the court's order of commitment and place the person on probation on the condition that the person shall continue the court-ordered child support payments with court costs and on other reasonable conditions that the court requires.

The terms and conditions of probation may include but shall not be limited to the conditions that the probationer shall:

1. report to the probation officer as directed;

2. permit the probation officer to visit him at his home or elsewhere;

3. obtain counseling on financial planning, budgeting management, alcohol or drug abuse, or other matters causing the defendant to fail to pay the child support payments;

4. pay all court costs.

(b) The probation may be for any period not to exceed five years or until one year has elapsed after all payments in arrears have been paid, whichever period is the longer.

(c) A court granting probation may fix a fee not exceeding $10 per month to be paid to the court by the probationer during the probationary period. The court may make payment of the fee a condition of granting or continuing the probation.

The court shall deposit the fees received under this section in the special fund of the county treasury provided by Subsection (b) of Section 4.05 of Article 42.121, Code of Criminal Procedure, 1965, to be used for the provision of adult probation or community-based adult corrections services or facilities other than a jail or prison.

(d) If a probationer violates a condition of probation, the court may cause the probationer's arrest by warrant as in other cases. An arrested probationer shall be brought promptly before the court causing the arrest, and the court, after a hearing without a jury, may continue, modify, or revoke the probation as the evidence warrants.

(e) When a probationary period has been satisfactorily completed, the court shall on its own motion discharge the probationer from probation. On the motion of a probationer who has satisfactorily completed one year of probation while not delinquent in the payment of child support, the court may discharge the probationer from probation.

[Acts 1981, 67th Leg., p. 2536, ch. 674, § 1, eff. Sept. 1, 1981.]

CHAPTER 15. TERMINATION OF THE PARENT-CHILD RELATIONSHIP

Sec.
15.01. Termination When Parent is Petitioner.
15.02. Involuntary Termination of Parental Rights.
15.021. Filing of Petition to Terminate Before Birth.
15.022. Termination After Abortion.
15.03. Affidavit of Relinquishment of Parental Rights.
15.04. Affidavit of Status of Child.
15.041. Affidavit of Waiver of Interest in Child.
15.05. Decree.
15.06. Dismissal of Petition.
15.07. Effect of Decree.

§ 15.01. Termination When Parent is Petitioner

A parent may file a petition requesting termination of the parent-child relationship with his child. The petition may be granted if the court finds that termination is in the best interest of the child.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 15.02. Involuntary Termination of Parental Rights

A petition requesting termination of the parent-child relationship with respect to a parent who is not the petitioner may be granted if the court finds that:

(1) the parent has:

(A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return; or

(B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months; or

(C) voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months; or

(D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child; or

(E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child; or

(F) failed to support the child in accordance with his ability during a period of one year ending within six months of the date of the filing of the petition; or

(G) abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence; or

(H) voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth; or

(I) contumaciously refused to submit to a reasonable and lawful order of a court under Section 34.05 of this code; or

(J) been the major cause of:

(i) the failure of the child to be enrolled in school as required by the Texas Education Code; or

(ii) the child's absence from his home without the consent of his parents or guardian for a substantial length of time or without the intent to return; or

(K) executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by Section 15.03 of this code; and in addition, the court further finds that

(2) termination is in the best interest of the child.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1266, ch. 476, § 31, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1793, ch. 727, § 1, eff. Aug. 27, 1979.]

§ 15.021. Filing of Petition to Terminate Before Birth

A petition in a suit affecting the parent-child relationship which requests the termination of the parent-child relationship with respect to either or both parents may be filed before the birth of the child and after the first trimester of the mother's pregnancy. If the petition is filed before the birth of the child, no hearing on the termination may be held nor may orders other than temporary orders be issued until the child is at least five days old. If the petition is filed before the birth of the child, the term "unborn child" shall be substituted for the name of the child in all records and documents required by this title that are filed before the birth of the child. After the birth of the child, the name of the child shall be entered in the record and used in subsequent proceedings other than an adoption.

[Acts 1975, 64th Leg., p. 1267, ch. 476, § 32, eff. Sept. 1, 1975.]

§ 15.022. Termination After Abortion

(a) A petition requesting termination of the parent-child relationship with respect to a parent who is not the petitioner may be granted if the child was born alive as the result of an abortion.

(b) In this code, "abortion" means an intentional expulsion of a human fetus from the body of a

woman induced by any means for the purpose of causing the death of the fetus.

(c) The court or the jury may not terminate the parent-child relationship under this section with respect to a parent who:

(1) had no knowledge of the abortion; or

(2) participated in or consented to the abortion for the sole purpose of preventing the death of the mother.

[Acts 1979, 66th Leg., p. 1192, ch. 580, § 2, eff. June 13, 1979.]

§ 15.03. Affidavit of Relinquishment of Parental Rights

(a) An affidavit for voluntary relinquishment of parental rights must be signed after the birth of the child by the parent, whether or not a minor, whose parental rights are to be relinquished, witnessed by two credible persons, and verified before any person authorized to take oaths.

(b) The affidavit must contain:

(1) the name, address, and age of the parent whose parental rights are being relinquished;

(2) the name, age, and birthdate of the child;

(3) the names and addresses of the guardians of the person and estate of the child, if any;

(4) a statement that the affiant is or is not presently obligated by court order to make payments for the support of the child;

(5) a full description and statement of value of all property owned or possessed by the child;

(6) allegations that termination of the parent-child relationship is in the best interest of the child;

(7) one of the following, as applicable:

(A) the name and address of the other parent;

(B) a statement that the parental rights of the other parent have been terminated by death or court order; or

(C) a statement that the child is not the legitimate child of the father and that an affidavit of status of child has been executed as provided by Section 15.04 of this code;

(8) a statement that the parent has been informed of his parental rights, powers, duties, and privileges; and

(9) a statement that the relinquishment is revocable, or that the relinquishment is irrevocable, or that the relinquishment is irrevocable for a stated period of time.

(c) The affidavit may contain:

(1) a designation of any qualified person, the Texas Department of Human Resources, or any authorized agency as managing conservator of the child;

(2) a waiver of process in a suit to terminate the parent-child relationship brought under Section 15.02(1)(K) of this code, or in a suit to terminate joined with a petition for adoption under Section 16.03(b) of this code; and

(3) a consent to the placement of the child for adoption by the Texas Department of Human Resources or by an agency authorized by the Texas Department of Human Resources to place children for adoption.

(d) An affidavit of relinquishment of parental rights which designates as the managing conservator of the child the Texas Department of Human Resources or an agency authorized by the Texas Department of Human Resources to place children for adoption is irrevocable. Any other affidavit of relinquishment is revocable unless it expressly provides that it is irrevocable for a stated period of time not to exceed 60 days after the date of its execution.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1267, ch. 476, § 33, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 2270, ch. 551, § 6, eff. Aug. 31, 1981.]

§ 15.04. Affidavit of Status of Child

(a) If the child is not the legitimate child of the father, an affidavit shall be executed by the mother, whether or not a minor, witnessed by two credible persons, and verified before any person authorized to take oaths.

(b) The affidavit must state:

(1) that the mother is not and has not been married to the father of the child;

(2) that the mother and father have not attempted to marry under the laws of this state or another state or nation;

(3) that paternity has not been established under the laws of any state or nation; and

(4) one of the following, as applicable:

(A) the father is unknown and no probable father is known;

(B) the name of the father, but the affiant does not know the whereabouts of the father;

(C) the father has executed a statement of paternity under Section 13.22 of this code and an affidavit of relinquishment of parental rights under Section 15.03 of this code and both affidavits have been filed with the court;

(D) the name and whereabouts of the father; or

(E) the name of any probable father of the child.

(c) The affidavit of status of child may be executed at any time after the first trimester of the pregnancy of the mother.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1268, ch. 476, § 34, eff. Sept. 1, 1975.]

§ 15.041. Affidavit of Waiver of Interest in Child

(a) A person may execute an affidavit disclaiming any interest in a child and waiving notice or the service of citation in any suit to be filed affecting the parent-child relationship with respect to the child.

(b) The affidavit shall be signed by the person, whether or not a minor, witnessed by two credible persons, and verified before a person authorized to take oaths. The affidavit may be executed before the birth of the child.

(c) The affidavit may contain a statement that the affiant does not admit being the father of the child or having had a sexual relationship with the mother of the child.

(d) An affidavit of waiver of interest in a child may be used in any proceeding in which the affiant attempts to establish an interest in the child. The affidavit may not be used in any proceeding brought by another person to establish the affiant's paternity of the child.

(e) In a suit to adopt a child or in a suit brought by the Texas Department of Human Resources or an authorized agency for the purpose of terminating all legal relationships and rights which exist or may exist between the child's parents and the child, the court may render a decree terminating all legal relationships and rights which exist or may exist between a child and a man who has executed an affidavit of waiver of interest in the child, including the right to seek voluntary legitimation of the child, if the court finds that rendition of the decree is in the best interest of the child.

[Acts 1975, 64th Leg., p. 1268, ch. 476, § 35, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2360, ch. 582, § 1, eff. Sept. 1, 1981.]

§ 15.05. Decree

(a) If the court finds grounds for termination of the parent-child relationship, it shall enter a decree terminating the parent-child relationship.

(b) If the court terminates the parent-child relationship with respect to both parents or to the only living parent, the court shall appoint a suitable, competent adult or authorized agency as managing conservator of the child. An agency designated managing conservator in an unrevoked or irrevocable affidavit of relinquishment shall be appointed managing conservator. The order of appointment may refer to the docket number of the suit and need not refer to the parties nor be accompanied by any other papers in the record.

(c) If the court does not order termination of the parent-child relationship, it shall:

(1) dismiss the petition; or

(2) enter any order considered to be in the best interest of the child.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 15.06. Dismissal of Petition

A suit to terminate the parent-child relationship may not be dismissed nor may a nonsuit be taken in the suit unless the dismissal or nonsuit is approved by the court.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1981, 67th Leg., p. 944, ch. 355, § 5, eff. Sept. 1, 1981.]

§ 15.07. Effect of Decree

A decree terminating the parent-child relationship divests the parent and the child of all legal rights, privileges, duties, and powers, with respect to each other, except that the child retains the right to inherit from and through its divested parent unless the court otherwise provides. Nothing in this chapter shall preclude or affect the rights of a natural maternal or paternal grandparent to reasonable access under Section 14.03(d) of this code.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1269, ch. 476, § 36, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 335, ch. 164, § 2, eff. Aug. 29, 1977.]

CHAPTER 16. ADOPTION

SUBCHAPTER A. ADOPTION OF CHILDREN

Sec.

SUBCHAPTER B. ADOPTION OF ADULTS

SUBCHAPTER A. ADOPTION OF CHILDREN

§ 16.01. Who May be Adopted

Any child residing in this state at the time a petition requesting adoption is filed may be adopted.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 16.02. Who May Adopt

Any adult is eligible to adopt a child who may be adopted.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1269, ch. 476, § 37, eff. Sept. 1, 1975.]

§ 16.03. Prerequisites to Petition

(a) If a petitioner is married, both spouses must join in the petition for adoption.

(b) Except as provided in Subsection (c) of this section, no petition for adoption of a child may be considered unless there has been a decree terminating the parent-child relationship as to each living parent of the child or unless the termination proceeding is joined with the proceeding for adoption.

(c) If a parent is presently the spouse of the petitioner, no termination decree is required with respect to the parental rights of that parent.

(d) If an affidavit of relinquishment of parental rights contains a consent that the Texas Department of Human Resources or an authorized agency may place the child for adoption and appoints the department or agency managing conservator of the child, no further consent by the parent is required and the adoption decree shall terminate all rights of the parent without further termination proceedings.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1269, ch. 476, §§ 38 to 40, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 2270, ch. 551, § 7, eff. Aug. 31, 1981.]

§ 16.031. Social Study: Time for Hearing

(a) In a suit affecting the parent-child relationship in which an adoption is sought, the court shall order the making of a social study as provided in Section 11.12 of this code and shall set a date for its filing.

(b) The court shall set the date for the hearing on the adoption at a time not later than 60 days, nor earlier than 40 days, after the date on which the investigator is appointed. For good cause shown, the court may set the hearing at any time that provides adequate time for filing the report of the study.

[Acts 1975, 64th Leg., p. 1269, ch. 476, § 41, eff. Sept. 1, 1975.]

§ 16.032. Health, Social, Educational, and Genetic History Report

(a) Before placing a child for adoption with any person other than the child's stepparent, grandparent, aunt, or uncle by birth, marriage, or prior adoption, the Texas Department of Human Resources, an authorized agency, or the child's parent or guardian shall compile a report on the available health, social, educational, and genetic history of the child to be adopted. If the child has been placed for adoption by any person or entity other than the department, an authorized agency, or the child's parent or guardian, it is the duty of the person or entity who places the child for adoption to prepare the report.

(b) The health history of the child must include information about the child's health status at the time of placement. The health history must include birth, neonatal, and other medical, psychological, psychiatric, and dental history, a record of immunizations, and the available results of medical, psychological, psychiatric, and dental examinations of the child.

(c) The social history of the child must include information, to the extent known, about past and existing relationships among the child, his siblings, his parents by birth, his extended family, and other persons who have had physical possession of or legal access to the child.

(d) The educational history of the child shall include, to the extent known, information about the enrollment and performance of the child in educational institutions, results of educational testing and standardized tests, and special educational needs, if any, of the child.

(e) The genetic history of the child shall include a description of the child's parents by birth and their parents, and shall specifically include, to the extent such information is available, information about:

(1) their health and medical history;

(2) their health status at the time of placement;

(3) the cause of and their age at death;

(4) their height and weight and eye and hair color;

(5) their nationality and ethnic backgrounds;

(6) their general levels of educational and professional achievements, if any;

(7) their religious backgrounds, if any; and

(8) the existence of any other child or children born to either of the child's parents by birth prior to placement of the child for adoption.

(f) The department, authorized agency, parent, guardian, or person or entity who places the child for adoption shall, at or before the time of placement, provide the adoptive parents with a summary of the report edited to protect the confidentiality of birth parents and their families.

(g) The report and a copy of the report summary submitted to the child's adoptive parents shall be retained for a period of 99 years by the department or authorized agency placing the child for adoption. If the agency ceases to function as an authorized agency, the agency shall transfer all the reports to the department or, after giving notice to the department, to a transferee agency that is assuming responsibility for the preservation of the agency's adoption records. If the child has not been placed for adoption by the department or an authorized

agency, and if the child is being adopted by a person other than the child's stepparent, grandparent, aunt, or uncle by birth, marriage, or prior adoption, the person or entity who places the child for adoption shall file the report and a copy of the report summary submitted to the child's adoptive parents with the department, which shall retain such copies for a period of 99 years.

(h) No petition for adoption of a child by a person other than the child's stepparent, grandparent, aunt, or uncle by birth, marriage, or prior adoption may be granted until a copy of the report summary submitted to the child's adoptive parents has been filed in the record of the suit.

(i) The department, authorized agency, or court retaining a copy of the report summary submitted to the adoptive parents shall provide a copy of that summary to the following persons on request:

(1) an adoptive parent of the adopted child;

(2) the managing conservator, guardian of the person, or legal custodian of the adopted child;

(3) the adopted child, after he is an adult;

(4) the surviving spouse of the adopted child if the adopted child is dead and the spouse is the parent or guardian of a child of the deceased adopted child; or

(5) a progeny of the adopted child if the adopted child is dead and the progeny is an adult.

(j) A copy of the report summary may not be furnished to any person who cannot furnish satisfactory proof of his identity and of his legal entitlement to receive a copy of the summary.

(k) A person requesting a copy of the report summary must pay the actual and reasonable costs of providing a copy of the summary and verifying his entitlement to the copy.

(*l*) The department, authorized agency, parent, guardian, person, or entity who prepares and files the original report and summary is required to furnish supplemental medical information to the adoptive parents should it become available, and to file such supplemental information where the original report and summary are filed, where it shall be retained for as long as the original report and summary are required to be retained.

[Acts 1983, 68th Leg., p. 1782, ch. 342, § 4, eff. Jan. 1, 1984.]

Section 8 of the 1983 Act provides:

"A court having, on the effective date of this Act, jurisdiction of a suit affecting the parent-child relationship in which an adoption is sought may waive the requirement under Section 16.032, Family Code, that a copy of the summary report must be filed, if the court finds that the making or filing of the report is not feasible or would cause an injustice."

§ 16.04. Residence With Petitioner

No petition for the adoption of a child shall be granted until the child has lived for at least six months in the home of the petitioner. However, if requested in the petition, the residence requirement may be waived by order of the court if the court is satisfied that the best interest of the child would be served.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 16.05. Consent Required

(a) If a managing conservator has been appointed, his consent to the adoption must be given in writing and filed in the record unless he is a petitioner, in which case his consent need not be given.

(b) If a parent of the child is presently the spouse of the petitioner, that parent must join in the petition for adoption, and no further consent of that parent is required.

(c) If the child to be adopted is 12 years of age or older, his consent must be given in court or in writing in the form directed by the court. The court may waive this requirement if the best interest of the child would be served.

(d) The court may waive the requirement of consent to the adoption by the managing conservator if it finds that the consent is being refused, or has been revoked, without good cause.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 16.06. Revocation of Consent

At any time before an order granting the adoption of the child is entered, a consent required by Section 16.05 of this code may be revoked by filing a signed revocation statement with the court.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 16.07. Attendance Required

(a) If husband and wife are joint petitioners and it would be unduly difficult for one of the petitioners to appear, the court may waive the attendance of that petitioner if the other spouse is present.

(b) If the child to be adopted is 12 years of age or older, he shall attend the hearing unless the court finds it to be in the best interest of the child to waive this requirement.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 16.08. Decree

(a) If the court is satisfied that the requirements for adoption have been met and the adoption is in the best interest of the child, the court shall make a decree granting the adoption, reciting the findings pertaining to the court's jurisdiction.

(b) If a request for termination of the parent-child relationship has been joined with the petition for adoption, the court shall also enter in its decree

a termination of the parent-child relationship. The court must make separate findings that the termination is in the best interests of the child and that the adoption is in the best interests of the child.

(c) The name of the child may be changed in the decree if requested.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1269, ch. 476, § 42, eff. Sept. 1, 1975.]

§ 16.09. Effect of Adoption Decree

(a) On entry of a decree of adoption, the parent-child relationship exists between the adopted child and the adoptive parents as if the child were born to the adoptive parents during marriage.

(b) An adopted child is entitled to inherit from and through his adoptive parents as though he were the natural child of the parents.

(c) The terms "child," "descendant," "issue," and other terms indicating the relationship of parent and child include an adopted child unless the context or express language clearly indicates otherwise.

(d) Nothing in this chapter shall preclude or affect the rights of a natural maternal or paternal grandparent to reasonable access under Section 14.03(d) of this code.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1977, 65th Leg., p. 335, ch. 164, § 3, eff. Aug. 29, 1977.]

§ 16.10. Withdrawal or Denial of Petition

In a suit in which the petition is withdrawn or denied, the court may order the removal of the child from the proposed adoptive home if removal is in the child's best interest, and may enter any order which is necessary for the welfare of the child.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 16.11. Abatement

(a) In the event of the death of the petitioner or petitioners, or the divorce of the petitioners, the proceeding abates and the petition for adoption shall be dismissed, unless the petition is amended to request adoption by one of the original petitioners.

(b) If one of two petitioners dies, the proceeding continues uninterrupted.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 16.12. Direct or Collateral Attack

The validity of an adoption decree is not subject to attack more than two years after the decree is entered.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

[Sections 16.13 to 16.50 reserved for expansion]

SUBCHAPTER B. ADOPTION OF ADULTS

§ 16.51. Who May Adopt

Any adult resident of the state may petition the district court in the county of his residence to adopt an adult person.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 16.52. Consent

No petition for adoption of an adult shall be granted until the adult to be adopted has acknowledged and filed with the petition his consent to adoption by the petitioner.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 16.53. Petition

The petition to adopt an adult shall be entitled "In the interest of _____, an adult." A petition filed by a married person must be joined in by the spouse.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 16.54. Attendance at Hearing

The petitioner and the adult to be adopted shall be required to attend the hearing unless for good cause, shown by an order entered in the minutes of the court, the petitioner or adult to be adopted is unable to be present.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 16.55. Effect of Adoption Decree

On entry of the decree of adoption, the adopted adult is the son or daughter of the adoptive parents for all purposes, and of the natural parents for inheritance purposes only. However, the natural parents may not inherit from or through the adopted adult.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1270, ch. 476, § 43, eff. Sept. 1, 1975.]

CHAPTER 17. EMERGENCY PROCEDURES IN SUIT BY GOVERNMENTAL ENTITY

Sec.

Former Chapter 17, Suit for Protection of Child in Emergency, consisting of Sections 17.01 to 17.09, was amended by Acts 1979, 66th Leg., p. 1472, ch. 643, § 4, to read Emergency Procedures in Suit by Governmental Entity, Sections 17.01 to 17.08.

§ 17.01. Governmental Entity May Bring Suit

A suit affecting the parent-child relationship may be brought by a governmental entity with an interest in the child under Chapters 11, 13, 14, and 15 of this code. An emergency order or taking possession of a child without a court order as provided by Section 17.02 or 17.03 of this code is governed by this chapter.

[Amended by Acts 1975, 64th Leg., p. 1270, ch. 476, § 44, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1472, ch. 643, § 4, eff. Sept. 1, 1979.]

§ 17.011. Living Child After Abortion

An authorized representative of the Texas Department of Human Resources may assume the care, control, and custody of a child born alive as the result of an abortion as defined in Subsection (b) of Section 15.022 of this code and, if so, shall file a petition under Section 17.02 of this code and comply with all the provisions of Section 11.09 of this code. A child the possession of whom is assumed under this section need not be delivered to the court except on the order of the court.

[Acts 1979, 66th Leg., p. 1193, ch. 580, § 3, eff. June 13, 1979.]

This section was added by Acts 1979, 66th Leg., p. 1193, ch. 580, § 3, without reference to the amendment of this chapter by Acts 1979, 66th Leg., p. 1471, ch. 643, § 4.

§ 17.02. Emergency Orders

(a) Before any temporary restraining order or attachment of the child is issued without a full adversary hearing in a suit affecting the parent-child relationship brought by a governmental entity, the court must be satisfied from a sworn petition or affidavit that:

(1) there is an immediate danger to the physical health or safety of the child; and

(2) there is no time, consistent with the physical health or safety of the child, for an adversary hearing.

(b) The petition or affidavit required by Subsection (a) of this section shall be sworn to by a person with personal knowledge and shall state facts sufficient to satisfy a person of ordinary prudence and caution that there is an immediate danger to the physical health or safety of the child and that there is no time, consistent with the physical health or safety of the child, for an adversary hearing.

(c) A temporary restraining order or attachment of the child issued under Subsection (a) of this section may not extend for more than 10 days.

[Amended by Acts 1979, 66th Leg., p. 1472, ch. 643, § 4, eff. Sept. 1, 1979.]

§ 17.03. Taking Possession of a Child Without a Court Order

(a) An authorized representative of the Texas Department of Human Resources, a law enforcement officer, or a juvenile probation officer may take possession of a child without a court order under the following conditions and no others:

(1) upon discovery of a child in a situation of danger to the child's physical health or safety when the sole purpose is to deliver the child without unnecessary delay to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child;

(2) upon the voluntary delivery of the child by the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child;

(3) upon personal knowledge of facts which would lead a person of ordinary prudence and caution to believe that there is an immediate danger to the physical health or safety of the child and that there is no time to obtain a temporary restraining order or attachment under Section 17.02 of this code;

(4) upon information furnished by another which has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that there is an immediate danger to the physical health or safety of the child and that there is no time to obtain a temporary restraining order or attachment under Section 17.02 of this code;

(5) upon personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse; or

(6) upon information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse.

(b) When a child is taken into possession under Subdivision (3), (4), (5), or (6) of Subsection (a) of this section, the person taking the child into possession shall, without unnecessary delay, cause to be filed a suit affecting the parent-child relationship and request the court to appoint a guardian ad litem for the child and to cause a hearing to be held by no

later than the first working day after the child is taken into possession.

(c) The court in which the suit affecting the parent-child relationship has been filed under Subsection (b) of this section shall hold a hearing on or before the first working day after the child is taken into possession and shall make such orders as are necessary to protect the physical health and safety of the child. If the court is unavailable for a hearing on the first working day, then, and only in that event, the hearing shall be held no later than the first working day after the court becomes available, provided that the hearing is held no later than the third working day after the child is taken into possession. The hearing may be ex parte and proof may be by sworn petition or affidavit if a full adversary hearing is not practicable. If the hearing established by this subsection is not held within the time limits required, the child shall be returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child.

(d) Unless the court at the hearing required under Subsection (c) of this section is satisfied that there is a continuing danger to the physical health or safety of the child if the child is returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child, the court shall order the return of the child to the person entitled to possession.

(e) The court shall find that there is a continuing danger to the physical health or safety of the child as required by Subsection (d) of this section if the evidence shows that the child has been the victim of sexual abuse on one or more occasions and that there is a reasonable likelihood that the child will be the victim of sexual abuse in the future.

(f) A full adversary hearing shall be held within 10 days of the taking of the child into possession under Subdivision (3), (4), (5), or (6) of Subsection (a) of this section and such orders made as are necessary for the protection of the physical health and safety of the child.

(g) When possession of the child has been acquired under Subsection (a) of this section, the person taking the child into possession shall cause to be filed a suit affecting the parent-child relationship within 60 days from the date of the taking of the child into possession and a hearing to be held thereon.

(h) When a child is taken into possession under this section, that child shall not be held in isolation or in a jail or juvenile detention facility.

[Amended by Acts 1979, 66th Leg., p. 1472, ch. 643, § 4, eff. Sept. 1, 1979; Acts 1983, 68th Leg., p. 3833, ch. 599, § 3, eff. Aug. 29, 1983.]

§ 17.04. Adversary Hearing

(a) Unless the child has already been returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession and any temporary orders dissolved, a full adversary hearing shall be held within 10 days of:

(1) the taking of the child into possession by authority of Subdivision (3) or (4) of Subsection (a) of Section 17.03 of this code;

(2) the taking of the child into possession by authority of a temporary restraining order or attachment of a child issued under Section 17.02 of this code; or

(3) the filing of the suit provided under Subsection (f) of Section 17.03 of this code.

(b) At the conclusion of the full adversary hearing, the court shall order the return of the child to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession unless the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that there is a danger to the physical health or safety of the child which was caused by any act or failure to act of the person entitled to possession.

(c) If the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that there is a danger to the physical health or safety of the child, the court shall issue appropriate temporary orders under Section 11.11 of this code.

[Amended by Acts 1979, 66th Leg., p. 1472, ch. 643, § 4, eff. Sept. 1, 1979.]

§ 17.05. Jurisdiction of Chapter 17 Proceedings

(a) A suit affecting the parent-child relationship brought by a governmental entity seeking conservatorship or termination and a temporary restraining order or attachment of a child under this chapter may be filed in any court with jurisdiction to hear suits affecting the parent-child relationship in the county in which the child is found.

(b) Immediately after the issuance of such temporary orders as are necessary for the protection of the child pending a final hearing, a governmental entity shall determine the court of continuing jurisdiction and shall institute any transfers as are necessary under Section 17.06 or 11.06 of this code.

[Amended by Acts 1975, 64th Leg., p. 1270, ch. 476, § 45, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1472, ch. 643, § 4, eff. Sept. 1, 1979.]

§ 17.06. Transfers in Chapter 17 Proceedings

(a) Immediately after entry of temporary orders necessary for the protection of the child pending a final hearing, the court on the motion of a party shall transfer to the court of continuing jurisdiction, if there is a court of continuing jurisdiction, or if there is no court of continuing jurisdiction, to the

court having venue of the suit affecting the parent-child relationship under Section 11.04 of this code. Transfers shall be made under the procedures provided by Section 11.06 of this code.

(b) Temporary orders issued under this chapter are valid and enforceable until properly superseded by a court with jurisdiction to do so.

(c) Any court to which the suit has been transferred may enforce by contempt or otherwise any temporary order properly issued under this chapter.

[Amended by Acts 1979, 66th Leg., p. 1472, ch. 643, § 4, eff. Sept. 1, 1979.]

§ 17.07. Notice of Hearings

Notice shall be given in accordance with Section 11.09 of this code and the Texas Rules of Civil Procedure.

[Amended by Acts 1979, 66th Leg., p. 1472, ch. 643, § 4, eff. Sept. 1, 1979.]

§ 17.08. Civil Liability

A person who takes possession of a child under Section 17.03 of this code is immune from civil liability if, at the time possession is taken, he had reasonable cause to believe there was an immediate danger to the physical health or safety of the child.

[Amended by Acts 1979, 66th Leg., p. 1472, ch. 643, § 4, eff. Sept. 1, 1979.]

CHAPTER 18. REVIEW OF PLACEMENT OF CHILDREN UNDER THE CARE OF THE DEPARTMENT OF HUMAN RESOURCES

Sec.

§ 18.01. Review of Placements by Court of Continuing Jurisdiction

(a) In a suit affecting the parent-child relationship in which the Texas Department of Human Resources or any authorized agency has been named by the court or in an affidavit of relinquishment of parental rights as the managing conservator of a child, the court shall hold a hearing to review the conservatorship appointment and the placement of the child by the department or authorized agency in foster home care, group home care, or institutional care.

(b) The hearing shall be held not earlier than five and one-half months and not later than seven months after the date of the last hearing in the suit unless, for good cause shown by any party, an earlier hearing is approved by the court.

[Acts 1979, 66th Leg., p. 66, ch. 41, § 1, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 821, ch. 292, § 1, eff. June 8, 1981.]

§ 18.02. Voluntary Placements: Suit

(a) If a parent, managing conservator, or guardian of the person of a child who is not subject to the continuing jurisdiction of a court under this title voluntarily agrees to surrender the custody, care, or control of a child to the Texas Department of Human Resources, the department, not later than 60 days after taking possession of or exercising control of the child, shall file a suit affecting the parent-child relationship under this title, establishing a court of continuing jurisdiction for the child, and requesting a review of the placement of the child in foster home care, group home care, or institutional care.

(b) The petition shall state that the purpose of the suit is to initiate periodic review of the necessity and propriety of the placement of the child. A copy of the agreement between the department and the parent, managing conservator, or guardian of the child shall be filed with the petition.

(c) In addition to those persons listed in Section 11.09(a) of this code as entitled to service of citation in a suit affecting the parent-child relationship, a person listed in Section 18.03 of this code is entitled to service of citation.

(d) The hearing shall be held not earlier than five and one-half months and not later than seven months after the date that the department took possession of or exercised control over the child unless, for good cause shown by any party, an earlier hearing is approved by the court.

[Acts 1979, 66th Leg., p. 66, ch. 41, § 1, eff. Aug. 27, 1979.]

§ 18.03. Persons Entitled to Notice

The following persons are entitled to at least 10 days' notice of a hearing to review a child placement and are entitled to present evidence and be heard at the hearing:

(1) the Texas Department of Human Resources;

(2) the foster parent or director of the group home or institution where the child is residing;

(3) each parent of the child;

(4) the managing conservator or guardian of the person of the child; and

(5) any other person or agency named by the court to have an interest in the welfare of the child.

[Acts 1979, 66th Leg., p. 66, ch. 41, § 1, eff. Aug. 27, 1979.]

§ 18.04. When Child is at Home

(a) If the Texas Department of Human Resources or authorized agency returns a child to a parent for custody, care, or control, the department or authorized agency shall notify the court having continuing jurisdiction of the suit of the department's action and so long as the child remains under the custody, care, or control of the parent, no review of that placement is required under this chapter.

(b) If a child has been returned to a parent and if the department or authorized agency resumes the custody, care, or control of the child or designates any person other than a parent to have the custody, care, or control of the child, the department or authorized agency shall notify the court of its action.

(c) If the department or authorized agency resumes the custody, care, or control of the child or designates a person other than a parent to have the custody, care, or control of the child within three months after returning the child to a parent, the period that that child was under the custody, care, or control of his or her parent shall not be considered in determining the date for the next placement review hearing.

[Acts 1979, 66th Leg., p. 66, ch. 41, § 1, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 821, ch. 292, § 2, eff. June 8, 1981.]

§ 18.05. Child's Attendance at Hearing

The court in its discretion may dispense with the attendance of the child at a placement review hearing.

[Acts 1979, 66th Leg., p. 66, ch. 41, § 1, eff. Aug. 27, 1979.]

§ 18.06. Disposition of Child

At the conclusion of a placement review hearing under this chapter, the court, in accordance with the best interest of the child, may order:

(1) that the foster care, group home care, or institutional care be continued;

(2) that the child be returned to his or her parent or guardian;

(3) if the child has been placed with the Texas Department of Human Resources under a voluntary agreement, that the department institute further proceedings to appoint the department as managing conservator or to terminate parental rights in order to provide permanent placement for the child or to make the child available for adoption;

(4) if the parental rights of the child have already been terminated or the department or authorized agency has custody, care, and control of the child under an affidavit of relinquishment of parental rights naming the department or authorized agency as managing conservator, that the department or authorized agency attempt to place the child for adoption; or

(5) the Texas Department of Human Resources or authorized agency to provide services to ensure that every effort has been made to enable the parents to provide a family for their own children.

[Acts 1979, 66th Leg., p. 66, ch. 41, § 1, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 821, ch. 292, § 3, eff. June 8, 1981.]

SUBTITLE B. UNIFORM ACTS AND INTERSTATE COMPACTS

CHAPTER 21. UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

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SUBCHAPTER A. GENERAL PROVISIONS

§ 21.01. Short Title

This chapter may be cited as the Uniform Reciprocal Enforcement of Support Act.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 21.02. Purposes

The purposes of this chapter are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 21.03. Definitions

In this chapter, unless the context requires a different definition:

(1) "State" includes any state, territory, or possession of the United States and the District of Columbia in which this or a substantially similar reciprocal law has been enacted and includes a foreign nation or a state of a nation declared to have a similar reciprocal law as provided in Section 21.07 of this code.

(2) "Initiating state" means any state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(3) "Responding state" means any state in which any proceeding pursuant to the proceeding in the initiating state is or may be commenced.

(4) "Court" means the district court of this state and when the context requires, means the court of any other state as defined in a substantially similar reciprocal law.

(5) "Law" includes both common and statute law.

(6) "Duty of support" includes any duty of support imposed or imposable by law, including duties imposed by Chapter 12 or 13 of this code, or by any court order, decree, or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, judicial separation, separate maintenance, or otherwise, but shall not include alimony for a former wife.

(7) "Obligor" means any person owing a duty of support.

(8) "Obligee" means any person to whom a duty of support is owed and a state or political subdivision thereof.

(9) "Governor" includes any person performing the functions of governor or the executive authority of any territory covered by the provisions of this chapter.

(10) "Support order" means any judgment, decree, or order of support, whether temporary or final, whether subject to modification, revocation, or remission, regardless of the kind of action in which it is entered.

(11) "Rendering state" means any state in which a support order is originally entered.

(12) "Registering court" means any court of this state in which the support order of the rendering state is registered.

(13) "Register" means to record in the Registry of Foreign Support Orders.

(14) "Certification" shall be in accordance with the laws of the certifying state.

(15) "Prosecuting attorney" means the criminal district attorney, an attorney designated by the court, or the county attorney, or the district attorney where there is no criminal district attorney, attorney designated by the court, or county attorney.

(16) "Custody" includes managing conservatorship.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1270, ch. 476, §§ 46, 47, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 945, ch. 356, § 1, eff. Aug. 31, 1981.]

§ 21.04. Remedies

The remedies herein provided are in addition to and not in substitution for any other remedies even though prior orders of support exist in this state or any other jurisdiction.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1981, 67th Leg., p. 945, ch. 356, § 2, eff. Aug. 31, 1981.]

§ 21.05. Extent of Duty of Support

Duties of support arising under the law of this state, when applicable under Section 21.21 of this code, bind the obligor, present in this state, regardless of the presence or residence of the obligee.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 21.06. Uniformity of Interpretation

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 21.07. Declaration of Reciprocity: Other Nations

(a) If the attorney general finds that reciprocal provisions are available in a foreign nation or the state of a foreign nation for the enforcement of support orders issued in this state, the attorney general may declare the foreign nation or a state of a foreign nation to be a reciprocating state for the purpose of this chapter.

(b) A declaration made under Subsection (a) of this section may be revoked by the attorney general.

(c) A declaration by the attorney general made under Subsection (a) of this section may be reviewed by the court in an action under this title.

[Acts 1975, 64th Leg., p. 1270, ch. 476, § 48, eff. Sept. 1, 1975.]

§ 21.08. Venue

Venue for initiating cases under this chapter is in the county of the residence of the minor child for whom support is sought. Venue in all responding cases under this chapter is in the county of the residence of the obligor.

[Acts 1981, 67th Leg., p. 945, ch. 356, § 3, eff. Aug. 31, 1981.]

[Sections 21.09 to 21.10 reserved for expansion]

SUBCHAPTER B. CRIMINAL ENFORCEMENT

§ 21.11. Interstate Rendition

(a) The governor of this state may:

(1) demand from the governor of any other state the surrender of any person found in such other state who is charged in this state with the crime of failing to provide for the support of any person in this state; and

(2) surrender on demand by the governor of any other state any person found in this state who is charged in such other state with the crime of failing to provide for the support of any person in such other state.

(b) The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or other state.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 21.12. Conditions of Interstate Rendition

(a) Before making the demand on the governor of any other state for the surrender of a person charged in this state with the crime of failing to provide for the support of any person, the governor of this state may require any prosecuting attorney of this state to satisfy him that at least 60 days prior thereto the obligee brought an action for the support under this chapter, or that the bringing of an action would be of no avail.

(b) When under this chapter or a substantially similar act, a demand is made upon the governor of this state by the governor of another state for the surrender of a person charged in the other state with the crime of failing to provide support, the governor may call upon any prosecuting attorney to investigate or assist in investigating the demand, and to report to him whether any action for support has been brought under this chapter or would be effective.

(c) If any action for the support would be effective and no action has been brought, the governor may delay honoring the demand for a reasonable time to permit prosecution of an action for support.

(d) If an action for support has been brought and the person demanded has prevailed in that action, the governor may decline to honor the demand.

(e) If an action for support has been brought and pursuant thereto the person demanded is subject to a support order, the governor may decline to honor the demand so long as the person demanded is complying with the support order.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

[Sections 21.13 to 21.20 reserved for expansion]

SUBCHAPTER C. CIVIL ENFORCEMENT

§ 21.21. Choice of Law

Duties of support applicable under this chapter are those imposed or imposable under the laws of any state where the obligor was present during the period for which support is sought; but shall not include alimony for a former wife. The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 21.22. State or Political Subdivision Furnishing Support

Whenever the state or a political subdivision thereof furnishes support to an obligee, it has the same right to invoke the provisions hereof as the obligee to whom the support was furnished for the

purpose of securing reimbursement of expenditures so made and of obtaining continuing support.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 21.23. How Duties of Support are Enforced

All duties of support, including arrearages, are enforceable by a suit under this chapter, irrespective of the relationship between the obligor and the obligee.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 21.24. Jurisdiction

Jurisdiction of all proceedings hereunder is vested in the district court and in any other court authorized to order support for children.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1981, 67th Leg., p. 945, ch. 356, § 4, eff. Aug. 31, 1981.]

§ 21.25. Petition for Support

The petition shall be verified and shall state the name and, so far as known to the plaintiff, the address and circumstances of the defendant and his dependents for whom support is sought and all other pertinent information. The plaintiff shall attach to the petition a certified copy of the court order, decree, or judgment of support sought to be enforced, whether interlocutory or final, if any. The plaintiff may include in or attach to the petition any information which may help in locating or identifying the defendant, such as a photograph of the defendant, a description of any distinguishing marks of his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, or Social Security number.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1981, 67th Leg., p. 945, ch. 356, § 5, eff. Aug. 31, 1981.]

§ 21.26. Representation of Plaintiff

The prosecuting attorney, upon the request of the court or the Texas Department of Human Resources, shall represent the plaintiff in any proceeding under this chapter.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1981, 67th Leg., p. 946, ch. 356, § 6, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2271, ch. 551, § 8, eff. Aug. 31, 1981.]

§ 21.27. Minor Petitioner

A petition on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian ad litem.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 21.28. Court of This State as Initiating State

If the court of this state acting as an initiating state finds that the petition sets forth facts from which it may be determined that the defendant owes a duty of support and that a court of the responding state may obtain jurisdiction of the defendant or his property, it shall so certify and shall cause three copies of the petition, its certificate, and this chapter to be transmitted to the court in the responding state. If the name and address of such court is unknown and the responding state has an information agency comparable to that established in the initiating state, it shall cause such copies to be transmitted to the state information agency or other proper official of the responding state, with a request that it forward them to the proper court, and that the court of the responding state acknowledge their receipt to the court of the initiating state.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1981, 67th Leg., p. 946, ch. 356, § 7, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2271, ch. 551, § 9, eff. Aug. 31, 1981.]

§ 21.29. Costs

(a) There shall be no filing fee or other costs taxable to the obligee except as authorized by Subsection (b) of this section, but a court of this state, acting either as an initiating or responding state, may in its discretion direct that any part of or all fees and costs incurred in this state, including without limitation by enumeration, fees for filing, service of process, seizure of property, and stenographic service of both plaintiff and defendant or either and a reasonable fee to an attorney or the prosecuting attorney's office that represents the petitioner, be paid by the obligor or the county.

(b) The court may order that a portion, not to exceed 25 percent and not to exceed $500, of each child support payment ordered under this chapter be deducted and paid over to the registry of the court or an agency designated under Part D, Title IV, of the Social Security Act (42 U.S.C. Section 651 et seq.). The deduction shall be made only until the amount of the costs authorized by Subsection (a) of this section have been paid in full. This subsection does not authorize a deduction from any child support payment order to be made for the benefit of a child who qualifies for and is receiving financial assistance under 42 U.S.C. Section 602.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974; Acts 1983, 68th Leg., p. 3849, ch. 604, § 1, eff. June 19, 1983.]

§ 21.30. Jurisdiction by Arrest

When the court of this state, acting either as an initiating or responding state, has reason to believe that the defendant may flee the jurisdiction, it may:

(1) as an initiating state, request in its certificate that the court of the responding state obtain the

body of the defendant by appropriate process if that be permissible under the law of the responding state; or

(2) as a responding state, obtain the body of the defendant by appropriate process.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 21.31. State Information Agency

The Texas Department of Human Resources is the state information agency under this chapter, and it shall:

(1) compile a list of the courts and their addresses in this state having jurisdiction under this chapter and transmit the same to the state information agency of every other state which has adopted this chapter or a substantially similar act; and

(2) maintain a register of such lists received from other states and transmit copies thereof as soon as possible after receipt to every court in this state having jurisdiction under this chapter.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1981, 67th Leg., p. 946, ch. 356, § 8, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2271, ch. 551, § 10, eff. Aug. 31, 1981.]

§ 21.32. Duty of State as Responding State

(a) After the court of this state, acting as a responding state, has received from the court of the initiating state the aforesaid copies, the clerk of the court shall docket the case and notify the district judge or the judge of the domestic relations court, or both judges, of his action.

(b) It shall be the duty of the prosecuting attorney diligently to prosecute the case. He shall take all action necessary in accordance with the laws of this state to give the court jurisdiction of the defendant or his property and shall request the clerk of the court to set a time and place for a hearing.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1981, 67th Leg., p. 946, ch. 356, § 9, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2271, ch. 551, § 11, eff. Aug. 31, 1981.]

§ 21.33. Duty of Prosecuting Attorney in Responding State

(a) The prosecuting attorney shall, on his own initiative, use all means at his disposal to trace the defendant or his property and if, due to inaccuracies of the petition or otherwise, the court cannot obtain jurisdiction, the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the court in the initiating state.

(b) If the defendant or his property is not found in the judicial district and the prosecuting attorney discovers by any means that the defendant or his property may be found in another judicial district of this state or in another state, he shall so inform the court; and thereupon the clerk of the court shall forward the documents received from the court in the initiating state to a court in the other judicial district or to a court in the other state or to the information agency or other proper official of the other state with a request that it forward the documents to the proper court. Thereupon, both the court of the judicial district and any court of this state receiving the documents and the prosecuting attorney have the same powers and duties under this chapter as if the documents had been originally addressed to them. When the clerk of a court of this state retransmits documents to another court, he shall notify forthwith the court from which the documents came.

(c) If the prosecuting attorney has no information as to the whereabouts of the obligor or his property he shall so inform the initiating court.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 21.34. Continuation of the Case

If the plaintiff is absent from the responding state and the defendant presents evidence which constitutes a defense, the court shall continue the case for further hearing and the submission of evidence by both parties.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 21.35. Testimony of Husband and Wife

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this chapter. The defendant is a competent witness in the responding court and may be compelled to testify to any relevant matter, including marriage and other relevant matter establishing the duty of support or the ability to contribute support, which testimony may be the only evidence that is the basis for entry of an order.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1981, 67th Leg., p. 946, ch. 356, § 10, eff. Aug. 31, 1981.]

§ 21.36. Rules of Evidence; Presumptions

(a) In any hearing under this chapter, the court shall be bound by the same rules of evidence that bind the district court.

(b) In any suit brought under this chapter, if the initiating court certifies that the petition sets forth facts from which it may be determined that the defendant owes a duty of support and that a court of the responding state may obtain jurisdiction over the defendant or his property, the certified petition shall be admitted in the responding state as prima

facie evidence that the defendant's duty to support exists.

(c) In a contested case, it is presumed:

(1) that the obligor and the obligee have an equal duty of support; or

(2) if there is a prior support order, that the most recent order correctly designates the current amount of support and duty of support.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1981, 67th Leg., p. 947, ch. 356, § 11, eff. Aug. 31, 1981.]

§ 21.37. Support Order

If the court of the responding state finds a duty of support, it may order the defendant to furnish support or reimbursement therefor and subject the property of the defendant to such order.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 21.38. Transmittal of Orders

The court of this state when acting as a responding state shall cause to be transmitted to the court of the initiating state a copy of all orders of support or for reimbursement therefor.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 21.39. Enforcement Power of Court

In addition to the foregoing powers, the court of this state when acting as the responding state has the power to subject the defendant to such terms and conditions as the court may deem proper to assure compliance with its orders, and in particular:

(1) to require the defendant to furnish a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the defendant;

(2) to require the defendant to make payments at specified intervals to the district clerk or probation department of the court;

(3) to punish the defendant who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court; and

(4) to order the defendant (obligor) to pay as court costs a reasonable fee to any attorney or to the prosecuting attorney's office who represents the petitioner in any enforcement proceeding.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1271, ch. 476, § 49, eff. Sept. 1, 1975.]

Acts 1973, 63rd Leg., p. 659, ch. 276 amended Civil Statutes, art. 2328b-4, § 25, to read:

"In addition to the foregoing powers, the court of this State when acting as the responding state has the power to subject the defendant to such terms and conditions as the court may deem proper to assure compliance with its orders and in particular: (a) To require the defendant to furnish a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the defendant.

"(b) To require the defendant to make payments at specified intervals to the district clerk or probation department of the court.

"(c) To punish the defendant who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court.

"(d) To order the defendant (obligor) to pay as court costs a reasonable fee to any attorney or to the prosecuting attorney's office who represents the petitioner in any enforcement proceeding."

§ 21.40. Receipt and Disbursement of Payments—Responding State

The court of this state when acting as a responding state shall have the following duties which may be carried out through the district clerk or probation department of the court:

(1) on the receipt of payment made by the defendant pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating state; and

(2) on request, to furnish to the court of the initiating state a certified statement of all payments made by the defendant.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 21.41. Receipt and Disbursement of Payments—Initiating State

The court of this state when acting as an initiating state shall have the duty which may be carried out through the district clerk or probation department of the court to receive and disburse forthwith all payments made by the defendant or transmitted by the court of the responding state.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 21.42. Stay of Proceedings

No proceeding under this chapter shall be stayed because of the existence of a pending suit for divorce, separation, annulment, dissolution, habeas corpus, custody proceeding, or suit affecting the parent-child relationship.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1981, 67th Leg., p. 947, ch. 356, § 12, eff. Aug. 31, 1981.]

§ 21.43. Application of Payments

No order of support issued by a court of this state when acting as a responding state shall supersede any other order of support, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 21.44. Participation in Proceeding

Participation in any proceedings under this chapter shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 21.45. Interdistrict Application

(a) This chapter is applicable when both the plaintiff and the defendant are in this state but in different judicial districts.

(b) If the initiating court finds that the petition sets forth facts from which it may be determined that the defendant owes a duty of support and finds that another court in this state may obtain jurisdiction of the defendant or his property, the clerk of the court shall send three copies of the petition and a certification of the findings to the court of the judicial district in which the defendant or his property is found. The clerk of the court receiving these copies shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court to which the copies are forwarded shall then have duties corresponding to those imposed upon them when acting for the state as a responding state.

(c) In a suit under this section, no defense may be raised other than payment and satisfaction of the support obligation or invalidity of the decree or judgment creating the obligation.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1981, 67th Leg., p. 947, ch. 356, § 13, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2272, ch. 551, § 12, eff. Aug. 31, 1981.]

[Sections 21.46 to 21.60 reserved for expansion]

SUBCHAPTER D. REGISTRATION OF FOREIGN SUPPORT ORDERS

§ 21.61. Additional Remedies

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided by this subchapter.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 21.62. Registration

The obligee may register the foreign support order in a court of this state in the manner, with the effect, and for the purposes herein provided.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 21.63. Registry of Foreign Support Orders

The clerk of the court shall maintain a registry of foreign support orders in which he shall record foreign support orders.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 21.64. Petition for Registration

The petition for registration shall be verified and shall set forth the amount remaining unpaid and a list of any other states in which the support order is registered and shall have attached to it a certified copy of the support order with all modifications thereof. The foreign support order is registered upon the filing of the petition subject only to subsequent order of confirmation.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 21.65. Jurisdiction and Procedure

The procedure to obtain jurisdiction of the person or property of the obligor shall be as provided in civil cases. The obligor may assert any defense available to a defendant in an action on a foreign judgment. If the obligor defaults, the court shall enter an order confirming the registered support order and determining the amounts remaining unpaid. If the obligor appears and a hearing is held, the court shall adjudicate the issues including the amounts remaining unpaid.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 21.66. Effect and Enforcement of Support Order

The support order as confirmed shall have the same effect and may be enforced as if originally entered in the court of this state. The procedures for the enforcement thereof shall be as in civil cases, including the power to punish the defendant for contempt as in the case of other orders for payment of temporary alimony, maintenance, or support entered in this state.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

[Chapters 22 to 24 reserved for expansion]

CHAPTER 25. UNIFORM INTERSTATE COMPACT ON JUVENILES

Sec.
25.01. Short Title.
25.02. Execution of Interstate Compact.
25.03. Execution of Additional Article.
25.04. Execution of Amendment.
25.05. Juvenile Compact Administrator.
25.06. Supplementary Agreements.
25.07. Financial Arrangements.
25.08. Enforcement.
25.09. Additional Procedures not Precluded.

§ 25.01. Short Title

This chapter may be cited as the Uniform Interstate Compact on Juveniles.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 25.02. Execution of Interstate Compact

The governor shall execute a compact on behalf of the state with any other state or states legally joining in it in substantially the following form:

"INTERSTATE COMPACT ON JUVENILES

"The contracting states solemnly agree:

ARTICLE I. FINDINGS AND PURPOSE

"That juveniles who are not under proper supervision and control, or who have absconded, escaped, or run away are likely to endanger their own health, morals, and welfare, and the health, morals, and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to (1) cooperative supervision of delinquent juveniles on probation or parole; (2) the return, from one state to another, of delinquent juveniles who have escaped or absconded; (3) the return, from one state to another, of nondelinquent juveniles who have run away from home; and (4) additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively. In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformative, and protective policies which guide their laws concerning delinquent, neglected, or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

ARTICLE II. EXISTING RIGHTS AND REMEDIES

"That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies, and procedures, and shall not be in derogation of parental rights and responsibilities.

ARTICLE III. DEFINITIONS

"That, for the purpose of this compact, 'delinquent juvenile' means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; 'probation or parole' means any kind of conditional release of juveniles authorized under the laws of the states party hereto; 'court' means any court having jurisdiction over delinquent, neglected, or dependent children; 'state' means any state, territory, or possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and 'residence' or any variant thereof means a place at which a home or regular place of abode is maintained.

ARTICLE IV. RETURN OF RUNAWAYS

"(a) That the parent, guardian, person, or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person, or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner, and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person, or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected, or dependent juvenile is pending in the court at the time when such juvenile runs away, the

court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person, or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

"Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person, or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding 90 days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense of juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

"(b) That the state to which a juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.

"(c) That 'juvenile' as used in this article means any person who is a minor under the law of the state of residence of the parent, guardian, person, or agency entitled to the legal custody of such minor.

ARTICLE V. RETURN OF ESCAPEES AND ABSCONDERS

"(a) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform

him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

"Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with this [1] legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding 90 days, as will enable his detention under a detention order issued on a requisition pursuant to this article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense of juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

"(b) That the state to which a delinquent juvenile is returned under this article shall be responsible for the payment of the transportation costs of such return.

[1] So in enrolled bill; probably should read "his".

ARTICLE VI. VOLUNTARY RETURN PROCEDURE

"That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of Article IV(a) or of Article V(a), may consent to his immediate return to the state from which he absconded, escaped, or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, by executing or subscribing in writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

ARTICLE VII. COOPERATIVE SUPERVISION OF PROBATIONERS AND PAROLEES

"(a) That the duly constituted judicial and administrative authorities of a state party to this compact (herein called 'sending state') may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called 'receiving state') while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian, or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies, and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian, or person entitled to the legal custody of the delinquent juvenile is not

a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

"(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

"(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceedings to have him adjudicated a delinquent juvenile for any act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense of juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

"(d) That the sending state shall be responsible under this article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

ARTICLE VIII. RESPONSIBILITY FOR COSTS

"(a) That the provisions of Articles IV(b), V(b), and VII(d) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

"(b) That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV(b), V(b), or VII(d) of this compact.

ARTICLE IX. DETENTION PRACTICES

"That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail, or lockup nor be detained or transported in association with criminal, vicious, or dissolute persons.

ARTICLE X. SUPPLEMENTARY AGREEMENTS

"That the duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment, and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment, and rehabilitation. Such care, treatment, and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall (1) provide the rates to be paid for the care, treatment, and custody of such delinquent juveniles, taking into consideration the character of facilities, services, and subsistence furnished; (2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment, and custody; (3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile; (4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state; (5) provide for reasonable inspection of such institutions by the sending state; (6) provide that the consent of the parent, guardian, person, or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and (7) make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

ARTICLE XI. ACCEPTANCE OF FEDERAL AND OTHER AID

"That any state party to this compact may accept any and all donations, gifts, and grants of money, equipment, and services from the federal or any local government, or any agency thereof and from any person, firm, or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same, subject to the terms, conditions, and regulations governing such donations, gifts, and grants.

ARTICLE XII. COMPACT ADMINISTRATORS

"That the governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XIII. EXECUTION OF COMPACT

"That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form or execution to be in accordance with the laws of the executing state.

ARTICLE XIV. RENUNCIATION

"That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending six months notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six months renunciation notice of the present article.

ARTICLE XV. SEVERABILITY

"That the provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstances shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 25.03. Execution of Additional Article

The governor shall also execute on the behalf of the state with any other state or states legally joining in it, an additional article to the Interstate Compact on Juveniles in substantially the following form:

ARTICLE XVI. ADDITIONAL ARTICLE

"That this article shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

"For the purposes of this article, 'child,' as used herein, means any minor within the jurisdictional age limits of any court in the home state.

"When any child is brought before a court of a state of which such child is not a resident, and such state is willing to permit such child's return to the home state of such child, such home state, upon being so advised by the state in which such proceeding is pending, shall immediately institute proceedings to determine the residence and jurisdictional facts as to such child in such home state, and upon finding that such child is in fact a resident of said state and subject to the jurisdiction of the court thereof shall within five days authorize the return of such child to the home state, and to the parent or custodial agency legally authorized to accept such custody in such home state, and at the expense of such home state, to be paid from such funds as such home state may procure, designate, or provide, prompt action being of the essence."

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 25.04. Execution of Amendment

The governor shall also execute on the behalf of the state with any other state or states legally joining in it, an amendment to the Interstate Compact on Juveniles in substantially the following form:

"RENDITION AMENDMENT

"(a) This amendment shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

"(b) All provisions and procedures of Articles V and VI of the Interstate Compact on Juveniles shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile charged with being a delinquent by reason of violating any criminal law shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in Article V of the compact shall be

forwarded by the judge of the court in which the petition has been filed."

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 25.05. Juvenile Compact Administrator

Under the compact, the governor may designate an officer as the compact administrator. The administrator, acting jointly with like officers of other party states, shall adopt regulations to carry out more effectively the terms of the compact. The compact administrator serves at the pleasure of the governor. The compact administrator shall cooperate with all departments, agencies, and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of a supplementary agreement entered into by this state.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 25.06. Supplementary Agreements

A compact administrator may make supplementary agreements with appropriate officials of other states pursuant to the compact. If a supplementary agreement requires or contemplates the use of an institution or facility of this state or requires or contemplates the provision of a service of this state, the supplementary agreement has no force or effect until approved by the head of the department or agency under whose jurisdiction the institution is operated, or whose department or agency is charged with performing the service.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 25.07. Financial Arrangements

The compact administrator may make or arrange for the payments necessary to discharge the financial obligations imposed upon this state by the compact or by a supplementary agreement made under the compact, subject to legislative appropriations.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 25.08. Enforcement

The courts, departments, agencies, and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to effectuate its purposes and intent which are within their respective jurisdictions.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 25.09. Additional Procedures not Precluded

In addition to the procedures provided in Articles IV and VI of the compact for the return of a runaway juvenile, the particular states, the juvenile, or his parents, the courts, or other legal custodian involved may agree upon and adopt any plan or procedure legally authorized under the laws of this state and the other respective party states for the return of the runaway juvenile.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

SUBTITLE C. MISCELLANEOUS PROVISIONS

CHAPTER 31. REMOVAL OF DISABILITIES OF MINORITY

Sec.

§ 31.01. Petition

(a) A minor who is a resident of this state and is at least 17 years of age, or is at least 16 years of age, living separate and apart from his parents, managing conservator, or guardian and is self-supporting and managing his own financial affairs, may petition to have his disabilities of minority removed for limited purposes or for general purposes.

(b) A minor who is not a resident of this state and is at least 17 years of age may petition to have his disabilities of minority removed for a limited purpose or for general purposes if he is an adult under the laws of the state of his residence.

(c) A minor may institute suit under this section in his own name and need not be represented by next friend.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1271, ch. 476, § 50, eff. Sept. 1, 1975.]

§ 31.02. Requisites of Petition

(a) The petition for removal of disabilities of minority must state:

(1) the name, age, and residence address of the petitioner;

(2) the name and residence address of each living parent;

(3) the name and residence address of the guardian of the person and the guardian of the estate, if any;

(4) the name and residence address of the managing conservator, if any;

(5) the reasons why removal would be in the best interest of the child; and

(6) the purposes for which removal is sought.

(b) If the petitioner is not a resident of this state, the following shall be attached to the petition:

(1) a birth certificate or other adequate proof of the petitioner's age; and

(2) a copy of the applicable law, certified by the secretary of state, or one holding a similar office, in the minor's state of residence.

(c) The petition must be verified by a parent of the petitioner, except that if a managing conservator or guardian of the person has been appointed, the petition must be verified by the person so appointed. If the person who is to verify the petition is unavailable or his whereabouts are unknown, the guardian ad litem shall verify the petition after his appointment.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1271, ch. 476, § 51, eff. Sept. 1, 1975.]

§ 31.03. Venue

(a) If the petitioner is a resident of this state, the petition shall be filed in the district court of the county where the petitioner resides.

(b) If the petitioner is not a resident of this state, the petition may be filed in any district court.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 31.04. Guardian Ad Litem

The court shall appoint a guardian ad litem to represent the interest of the petitioner at the hearing.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 31.05. Nonresident: Appearance

If the petitioner is not a resident of this state, his disabilities of minority may be removed for a limited purpose without personal appearance of the petitioner. The petitioner may appear through an attorney or a guardian ad litem.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 31.06. Decree

After a hearing, the court may remove the disabilities of minority as requested in the petition if found to be in the best interest of the petitioner. The decree shall specify the purposes for which disabilities are removed.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 31.07. Effect of General Removal

Except for specific constitutional and statutory age requirements, a minor whose disabilities are removed for general purposes has the power and capacity of an adult, including the capacity to contract.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 31.08. Registration of Decrees of Another State or Nation

(a) Any nonresident minor who has had his disabilities of minority removed in the state of his residence may file a certified copy of the decree or judgment removing his disabilities in the deed records of any county of this state.

(b) When a certified copy of the decree or judgment of a court of another state or nation is filed as provided in Subsection (a) of this section, the minor has the power and capacity of an adult, except as limited by Section 31.07 of this code and by the terms of the decree or judgment filed.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

CHAPTER 32. CHANGE OF NAME

SUBCHAPTER A. CHANGE OF NAME OF MINOR

Sec.
32.01. Who May File.
32.02. Petition.
32.03. Citation.
32.04. Decree.
32.05. Effect of Change of Name.

SUBCHAPTER B. CHANGE OF NAME OF ADULT

32.21. Petition.
32.22. Decree.
32.23. Effect of Change of Name.
32.24. Change of Name in Divorce Suit.

SUBCHAPTER A. CHANGE OF NAME OF MINOR

§ 32.01. Who May File

A parent, managing conservator, or guardian of the person of a minor may file a petition requesting a change of name of the minor.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 32.02. Petition

(a) A verified petition to change the name of a minor must be filed in a district court of the county where the minor resides and must state:

(1) the present name and address of the minor;

(2) the reason for which a change of name is requested;

(3) the full name to be given the minor; and

(4) whether or not the minor is subject to the continuing jurisdiction of a court under Subtitle A of this title.[1]

(b) If the minor is 12 years of age or older, his written consent to the change of name must be attached to the petition.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

[1] Section 11.01 et seq. (see § 11.05).

§ 32.03. Citation

(a) The following persons are entitled to citation in a suit under this subchapter:

(1) each parent whose parental rights have not been terminated;

(2) the managing conservator, if one has been appointed; and

(3) the guardian of the person of the child, if one has been appointed.

(b) Citation must be given in the same manner as provided in Section 11.09(b) of this code.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 32.04. Decree

After a hearing, for good cause shown, the court may order the name of the minor changed as requested in the petition if it finds that the change is in the best interest of the minor. A copy of the decree shall be sent to the State Department of Public Welfare if the petition alleged that the minor is subject to the continuing jurisdiction of a court under Subtitle A of this title.[1]

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

[1] Section 11.01 et seq. (see § 11.05).

§ 32.05. Effect of Change of Name

A change of name does not release a minor from any liability incurred in his previous name or defeat any right which the child held in his previous name.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

[Sections 32.06 to 32.20 reserved for expansion]

SUBCHAPTER B. CHANGE OF NAME OF ADULT

§ 32.21. Petition

Any adult may petition the district court in the county of his residence for a change of name. The petition must state the present name and address of the petitioner, the requested name, and the reason for which a change is desired.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 32.22. Decree

For good cause shown the court shall order a change of name as requested if it finds that the change is in the interest or to the benefit of the petitioner.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 32.23. Effect of Change of Name

A change of name does not release a person from any liability incurred in his previous name or defeat any right which the person held in his previous name.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 32.24. Change of Name in Divorce Suit

On the final disposition of a suit for divorce, annulment, or to declare a marriage void, the court, in its discretion, may enter a decree changing the name of either party specially praying for the change.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

CHAPTER 33. LIABILITY OF PARENTS FOR CONDUCT OF CHILD

Sec.
33.01. Liability.
33.02. Limits of Recovery.
33.03. Venue.

§ 33.01. Liability

A parent or other person who has the duty of control and reasonable discipline of a child is liable for any property damage proximately caused by:

(1) the negligent conduct of the child if the conduct is reasonably attributable to the negligent failure of the parent or other person to exercise that duty; or

(2) the wilful and malicious conduct of a child who is at least 12 years of age but under 18 years of age.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 33.02. Limits of Recovery

Recovery for damage caused by wilful and malicious conduct is limited to actual damages, not to exceed $15,000 per act, plus court costs and reasonable attorneys' fees.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1981, 67th Leg., p. 915, ch. 331, § 1, eff. June 10, 1981.]

§ 33.03. Venue

A suit under this chapter may be brought in the county where the conduct of the child occurred or in the county where the defendant resides.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

CHAPTER 34. REPORT OF CHILD ABUSE

Sec.

§ 34.01. Persons Required to Report

Any person having cause to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect shall report in accordance with Section 34.02 of this code.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 34.011. Form

The Texas Department of Human Resources shall promulgate a form and cause a sample to be distributed for the reporting of suspected occurrences of child abuse as required by Section 34.01 of this code. Copies of the form shall be distributed to all licensed hospitals in this state to be available for use without charge by hospital employees, physicians, patients, and other persons. The form shall include a statement that child abuse reports are confidential and that information contained in the reports, including the name of the person making the report, may be used only for the purposes consistent with the investigation of child abuse. The form shall give the address of the Texas Department of Human Resources. Hospital employees, physicians, patients, and other persons must complete the form and return it to the Texas Department of Human Resources.

[Acts 1979, 66th Leg., p. 1027, ch. 460, § 1, eff. Aug. 27, 1979.]

§ 34.02. Contents of Report: to Whom Made

(a) Nonaccusatory reports reflecting the reporter's belief that a child has been or will be abused or neglected, or has died of abuse or neglect, has violated the compulsory school attendance laws on three or more occasions, or has, on three or more occasions, been voluntarily absent from his home without the consent of his parent or guardian for a substantial length of time or without the intent to return shall be made to any local or state law enforcement agency, and in addition shall be made to:

(1) the Texas Department of Human Resources; or

(2) the agency designated by the court to be responsible for the protection of children.

(b) All reports must contain the name and address of the child, the name and address of the person responsible for the care of the child, if available, and any other pertinent information.

(c) All reports received by any local or state law enforcement agency shall be referred to the Texas Department of Human Resources or to the agency designated by the court to be responsible for the protection of children. The department or designated agency immediately shall notify the appropriate state or local law enforcement agency of any report it receives, other than from a law enforcement agency, that concerns the suspected abuse or neglect of a child or death of a child from abuse or neglect.

(d) An oral report shall be made immediately on learning of the abuse or neglect as prescribed in Subsection (a) of this section, and a written report shall be made within five days to the same agency or department. Anonymous reports, while not encouraged, will be received and acted on in the same manner as acknowledged reports.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1271, ch. 476, § 52, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 758, ch. 289, § 1, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2272, ch. 551, § 13, eff. Aug. 31, 1981.]

§ 34.03. Immunities

Any person reporting pursuant to this chapter is immune from liability, civil or criminal, that might otherwise be incurred or imposed. Immunity extends to participation in any judicial proceeding resulting from the report. Persons reporting in bad faith or malice are not protected by this section.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 34.04. Privileged Communications

In any proceeding regarding the abuse or neglect of a child or the cause of any abuse or neglect, evidence may not be excluded on the ground of privileged communication except in the case of communications between attorney and client.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 34.05. Investigation and Report of Receiving Agency

(a) The Texas Department of Human Resources or the agency designated by the court to be responsible for the protection of children shall make a thorough investigation promptly after receiving either the oral or written report. The primary purpose of the investigation shall be the protection of the child.

(b) In the investigation the department or agency shall determine:

(1) the nature, extent, and cause of the abuse or neglect;

(2) the identity of the person responsible for the abuse or neglect;

(3) the names and conditions of the other children in the home;

(4) an evaluation of the parents or persons responsible for the care of the child;

(5) the adequacy of the home environment;

(6) the relationship of the child to the parents or persons responsible for the care of the child;

(7) all other pertinent data.

(c) The investigation shall include a visit to the child's home, a physical examination of all the children in that home, and an interview with the subject child. The interview with the child may be conducted at any reasonable time and at any place, including the child's school. The investigation may include an interview with the child's parents. The investigation may include a psychological or psychiatric examination of all the children in that home. If admission to the home, school, or any place where the child may be, or permission of the parents or persons responsible for the child's care for the physical examinations cannot be obtained, then the juvenile court, or the district court, upon cause shown, shall order the parents or the persons responsible for the care of the children, or the person in charge of any place where the child may be, to allow entrance for the interview, the physical examination, and the investigation. If the parents or person responsible for the child's care does not consent to a psychological or psychiatric examination of the child that is requested by the department or agency, the juvenile court or district court, upon cause shown, shall order the examination to be made at the times and places designated by the court. A parent or person responsible for the child's care is entitled to notice and a hearing when the department or agency seeks a court order to allow a psychological or psychiatric examination.

(d) If, before the investigation is complete, the opinion of the investigators is that immediate removal is necessary to protect the child from further abuse or neglect, the investigators shall file a petition pursuant to Chapter 17 of this code [1] for temporary care and protection of the child.

(e) The agency designated by the court to be responsible for the protection of children or the department shall make a complete written report of the investigation. The report, together with its recommendations, shall be submitted to the juvenile court or the district court, the district attorney, and the appropriate law enforcement agency if sufficient grounds for the institution of a suit affecting the parent-child relationship are found.

(f) On the receipt of the report and recommendation required by Subsection (e) of this section, the court may direct the investigator to file a petition seeking appropriate relief under Subtitle A of this title.[2]

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1272, ch. 476, § 53, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1446, ch. 635, § 1, eff. Aug. 27 1979; Acts 1981, 67th Leg., p. 2272, ch. 551, § 14, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 4546, ch. 753, § 1, eff. Sept. 1, 1983.]

1 Section 17.01 et seq.
2 Section 11.01 et seq.

§ 34.06. Central Registry

The State Department of Public Welfare shall establish and maintain in Austin, Texas, a central registry of reported cases of child abuse or neglect. The department may adopt rules and regulations as are necessary in carrying out the provisions of this section. The rules shall provide for cooperation with local child service agencies, including hospitals, clinics, and schools, and cooperation with other states in exchanging reports to effect a national registration system.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 34.07. Failure to Report; Penalty

(a) A person commits an offense if the person has cause to believe that a child's physical or mental health or welfare has been or may be further adversely affected by abuse or neglect and knowingly fails to report in accordance with Section 34.02 of this code.

(b) An offense under this section is a Class B misdemeanor.

[Acts 1975, 64th Leg., p. 1272, ch. 476, § 54, eff. Sept. 1, 1975.]

§ 34.08. Confidentiality

The reports, records, and working papers used or developed in an investigation made under this chapter are confidential and may be disclosed only for purposes consistent with the purposes of this code under regulations adopted by the investigating agency.

[Acts 1975, 64th Leg., p. 1272, ch. 476, § 54, eff. Sept. 1, 1975.]

CHAPTER 35. CONSENT TO MEDICAL TREATMENT

Sec.
35.01. Who May Consent.
35.02. Consent Form.
35.03. Consent to Treatment by Minor.
35.04. Examination of Abused or Neglected Children.

§ 35.01. Who May Consent

Any of the following persons may consent to medical treatment of a minor when the person having the power to consent as otherwise provided by

law cannot be contacted and actual notice to the contrary has not been given by that person:

(1) a grandparent;

(2) an adult brother or sister;

(3) an adult aunt or uncle;

(4) an educational institution in which the minor is enrolled that has received written authorization to consent from the person having the power to consent as otherwise provided by law;

(5) any adult who has care and control of the minor and has written authorization to consent from the person having the power to consent as otherwise provided by law; or

(6) any court having jurisdiction of the child.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 35.02. Consent Form

(a) Consent to medical treatment under Section 35.01 of this code shall be in writing, signed by the person giving consent, and given to the doctor, hospital, or other medical facility that administers the treatment.

(b) The consent must contain:

(1) the name of the minor;

(2) the name of one or both parents, if known, and the name of the managing conservator or guardian of the person, if either has been appointed;

(3) the name of the person giving consent and his relation to the minor child;

(4) a statement of the nature of the medical treatment to be given; and

(5) the date on which the treatment is to begin.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974.]

§ 35.03. Consent to Treatment by Minor

(a) A minor may consent to the furnishing of hospital, medical, surgical, and dental care by a licensed physician or dentist if the minor:

(1) is on active duty with the armed services of the United States of America;

(2) is 16 years of age or older and resides separate and apart from his parents, managing conservator, or guardian, whether with or without the consent of the parents, managing conservator, or guardian and regardless of the duration of such residence, and is managing his own financial affairs, regardless of the source of the income;

(3) consents to the diagnosis and treatment of any infectious, contagious or communicable disease which is required by law or regulation adopted pursuant to law to be reported by the licensed physician or dentist to a local health officer or the Texas Department of Health and including all diseases within the scope by law or regulation of Section 1.03, Article 4445d, Vernon's Texas Civil Statutes;

(4) is unmarried and pregnant, and consents to hospital, medical, or surgical treatment, other than abortion, related to her pregnancy;

(5) is 18 years of age or older and consents to the donation of his blood and the penetration of tissue necessary to accomplish the donation; or

(6) consents to examination and treatment for drug addiction, drug dependency, or any other condition directly related to drug use.

(b) Consent by a minor to hospital, medical, surgical, or dental treatment under this section is not subject to disaffirmance because of minority.

(c) Consent of the parents, managing conservator, or guardian of a minor is not necessary in order to authorize hospital, medical, surgical, or dental care under this section.

(d) A licensed physician or dentist may, with or without the consent of a minor who is a patient, advise the parents, managing conservator, or guardian of the minor of the treatment given to or needed by the minor.

(e) A physician or dentist licensed to practice medicine or dentistry in this state or a hospital or medical facility shall not be liable for the examination and treatment of minors under this section except for his or its own acts of negligence.

(f) A physician, dentist, hospital, or medical facility may rely on the written statement of the minor containing the grounds on which the minor has capacity to consent to his own medical treatment under this section.

[Acts 1973, 63rd Leg., p. 1411, ch. 543, § 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 2899, ch. 493, § 3, eff. Aug. 29, 1983.]

§ 35.04. Examination of Abused or Neglected Children

(a) Except as provided in Subsection (b) of this section, a licensed physician or dentist having reasonable grounds to believe that a child's physical or mental condition has been adversely affected by abuse or neglect may examine the child without the consent of the child, the child's parents, or other person authorized to consent for the child or his parents. The examination may include X-rays, blood tests, and penetration of tissue necessary to accomplish these tests.

(b) Unless consent is obtained as otherwise allowed by law, a physician or dentist may not examine a child:

(1) who is 16 years old or over and refuses to consent; or

(2) if consent is refused by an order of a court.

(c) A physician or dentist examining a child under the authority of this section is not liable for dam-

ages except those damages resulting from his negligence.

[Acts 1975, 64th Leg., p. 1273, ch. 476, § 55, eff. Sept. 1, 1975.]

CHAPTER 36. CIVIL LIABILITY FOR INTERFERENCE WITH CHILD CUSTODY

Sec.
36.01. Definitions.
36.02. Liability for Interference With Child Custody.
36.03. Damages.
36.04. Affirmative Defense.
36.05. Venue.
36.06. Remedies Not Affected.
36.07. Notice.
36.08. Frivolous Suits.

§ 36.01. Definitions

In this chapter:

(1) "Court order" includes provisions in a decree or judgment and temporary and permanent orders of the courts of this and other states and nations.

(2) "Possessory interest in a child" means a right of possession of or access to a child and includes custody and visitation rights.

[Acts 1983, 68th Leg., p. 1725, ch. 328, § 1, eff. Sept. 1, 1983.]

§ 36.02. Liability for Interference With Child Custody

(a) A person who takes or retains possession of a child or who conceals the whereabouts of a child in violation of a court order that provides for possessory interests in a child may be liable for damages to the person who is denied a possessory interest in the child.

(b) The taking or retention of possession of a child or the child's concealment is a violation of a court order if it occurs at any time during which a person other than the person committing the act is entitled under the court order to a possessory interest in a child.

(c) Each person who aids or assists in conduct for which a cause of action is authorized by Subsection (a) of this section is jointly and severably liable for damages.

(d) A person who was not a party to the suit in which a court order was issued providing for possessory interests in a child is not liable under this chapter for a violation of the court order unless the person at the time of the violation:

(1) had actual notice of the existence and contents of the order; or

(2) had reasonable cause to believe that the child was the subject of a court order and that his actions were likely to violate the order.

[Acts 1983, 68th Leg., p. 1725, ch. 328, § 1, eff. Sept. 1, 1983.]

§ 36.03. Damages

(a) Damages under this chapter may include:

(1) the actual costs and expenses of the petitioner in locating a child who is the subject of the court order;

(2) the actual costs and expenses of the petitioner in recovering possession of the child, if the petitioner is entitled to possession of the child;

(3) the actual costs and expenses, including attorney's fees, of the petitioner in enforcing the court order that was violated;

(4) the actual costs and expenses, including attorney's fees, of bringing the suit under this chapter; and

(5) the value of mental suffering and anguish incurred by the petitioner because of a violation of the court order.

(b) If liability arises under Section 36.02 of this code and the person liable acted with malice or an intent to cause harm to the person who is denied a possessory interest in the child, the court or jury may award exemplary damages.

[Acts 1983, 68th Leg., p. 1725, ch. 328, § 1, eff. Sept. 1, 1983.]

§ 36.04. Affirmative Defense

Affirmative defenses under this chapter include:

(1) that the person violated the order with the express consent of the petitioner; and

(2) that after receiving notice of violation under this section, the person promptly and fully complied with the order.

[Acts 1983, 68th Leg., p. 1725, ch. 328, § 1, eff. Sept. 1, 1983.]

§ 36.05. Venue

A suit under this chapter may be brought in any county where the petitioner or the respondent resides or in which a suit affecting the parent-child relationship concerning the child who is the subject of the court order may be brought.

[Acts 1983, 68th Leg., p. 1725, ch. 328, § 1, eff. Sept. 1, 1983.]

§ 36.06. Remedies Not Affected

This chapter does not affect any other civil or criminal remedy available to any person, including the child, for interference with child custody nor does it affect the power of a parent to represent the

interest of a child in any suit brought on behalf of the child.

[Acts 1983, 68th Leg., p. 1725, ch. 328, § 1, eff. Sept. 1, 1983.]

§ 36.07. Notice

(a) As a prerequisite to the filing of suit under this chapter, a person who has been denied a possessory interest in a child in violation of a court order shall give written notice of the specific violation of the order to the person violating the order.

(b) The notice shall be by certified or registered mail, return receipt requested, to the last known address of the person alleged to be in violation of the order.

(c) The notice shall include a statement of the intention of the sender to file suit no less than 30 days after the date of mailing unless the order is promptly and fully complied with.

(d) Notice need not be given to persons aiding or assisting in conduct for which a cause of action is authorized under this section.

(e) Evidence that notice has been given under this subsection may be introduced in any proceeding under this section.

[Acts 1983, 68th Leg., p. 1725, ch. 328, § 1, eff. Sept. 1, 1983.]

§ 36.08. Frivolous Suits

A person sued for damages under this section is entitled to recover attorney's fees and court costs if:

(1) the claim for damages is dismissed or judgment is awarded to the defendant; and

(2) the court or jury finds that the claim for damages is frivolous, unreasonable, or without foundation.

[Acts 1983, 68th Leg., p. 1725, ch. 328, § 1, eff. Sept. 1, 1983.]

TITLE 3. DELINQUENT CHILDREN AND CHILDREN IN NEED OF SUPERVISION

Enactment

Title 3 of the Texas Family Code was added by Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, effective September 1, 1973. Sections 4 and 5 thereof provide:

"Sec. 4. This Act takes effect on September 1, 1973, and governs all proceedings, orders, and judgments brought after it takes effect, and also further proceedings in actions then pending, except to the extent that in the opinion of the court its application in an action pending when this Act takes effect would not be feasible or would work injustice. All things properly done under any previously existing rule or statute prior to the taking effect of this Act shall be treated as valid.

"Sec. 5. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

CHAPTER 51. GENERAL PROVISIONS

Sec.

§ 51.01. Purpose and Interpretation

This title shall be construed to effectuate the following public purposes:

(1) to provide for the care, the protection, and the wholesome moral, mental, and physical development of children coming within its provisions;

(2) to protect the welfare of the community and to control the commission of unlawful acts by children;

(3) consistent with the protection of the public interest, to remove from children committing unlawful acts the taint of criminality and the consequences of criminal behavior and to substitute a program of treatment, training, and rehabilitation;

(4) to achieve the foregoing purposes in a family environment whenever possible, separating the child from his parents only when necessary for his welfare or in the interest of public safety and when a child is removed from his family, to give him the care that should be provided by parents; and

(5) to provide a simple judicial procedure through which the provisions of this title are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

§ 51.02. Definitions

In this title:

(1) "Child" means a person who is:

(A) ten years of age or older and under 17 years of age; or

(B) seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

(2) "Parent" means the mother, the father whether or not the child is legitimate, or an adoptive parent, but does not include a parent whose parental rights have been terminated.

(3) "Guardian" means the person who, under court order, is the guardian of the person of the child or the public or private agency with whom the child has been placed by a court.

(4) "Custodian" means the adult with whom the child resides.

(5) "Juvenile court" means a court designated under Section 51.04 of this code to exercise jurisdiction over proceedings under this title.

(6) "Judge" or "juvenile court judge" means the judge of a juvenile court.

(7) "Prosecuting attorney" means the county attorney, district attorney, or other attorney who regularly serves in a prosecutory capacity in a juvenile court.

(8) "Law-enforcement officer" means a peace officer as defined by Article 2.12, Texas Code of Criminal Procedure.

(9) "Traffic offense" means:

(A) a violation of a penal statute cognizable under Chapter 302, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 802e, Vernon's Texas Penal Code);[1] or

(B) a violation of a motor vehicle traffic ordinance of an incorporated city or town in this state.

(10) "Party" means the state, a child who is the subject of proceedings under this subtitle, or the child's parent, spouse, guardian, or guardian ad litem.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973. Amended by Acts 1975, 64th Leg., p. 2152, ch. 693, § 1, eff. Sept. 1, 1975.]

[1] Transferred to Civil Statutes, art. 6701*l*-4.

§ 51.03. Delinquent Conduct; Conduct Indicating a Need for Supervision

(a) Delinquent conduct is conduct, other than a traffic offense, that violates:

(1) a penal law of this state punishable by imprisonment or by confinement in jail; or

(2) a reasonable and lawful order of a juvenile court entered under Section 54.04 or 54.05 of this code, including an order prohibiting conduct referred to in Subsection (b)(4) of this section.

(b) Conduct indicating a need for supervision is:

(1) conduct, other than a traffic offense or other than an offense included in Subdivision (5) of this subsection, that on three or more occasions violates either of the following:

(A) the penal laws of this state of the grade of misdemeanor that are punishable by fine only; or

(B) the penal ordinances of any political subdivision of this state;

(2) 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;

(3) the voluntary absence of a child from his home without the consent of his parent or guardian for a substantial length of time or without intent to return;

(4) conduct which violates the laws of this state prohibiting driving while intoxicated or under the influence of intoxicating liquor (first or subsequent offense) or driving while under the influence of any narcotic drug or of any other drug to a degree which renders him incapable of safely driving a vehicle (first or subsequent offense); or

(5) conduct prohibited by city ordinance or by state law involving the inhalation of the fumes or vapors of paint and other protective coatings or glue and other adhesives.

(c) Nothing in this title prevents criminal proceedings against a child for perjury.

(d) For the purpose of Subsection (b)(2) of this section an absence is excused when the absence results from:

(1) illness of the child;

(2) illness or death in the family of the child;

(3) quarantine of the child and family;

(4) weather or road conditions making travel dangerous;

(5) an absence approved by a teacher, principal, or superintendent of the school in which the child is enrolled; or

(6) circumstances found reasonable and proper.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973. Amended by Acts 1975, 64th Leg., p. 2153, ch. 693, §§ 2 to 4, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 906, ch. 340, § 1, eff. June 6, 1977.]

§ 51.04. Jurisdiction

(a) This title covers the proceedings in all cases involving the delinquent conduct or conduct indicating a need for supervision engaged in by a person who was a child within the meaning of this title at the time he engaged in the conduct, and the juvenile court has exclusive original jurisdiction over proceedings under this title.

(b) In a county having a juvenile board, the board shall designate one or more district, criminal district, domestic relations, juvenile, or county courts or county courts at law as the juvenile court, subject to Subsection (d) of this section.

(c) In a county not having a juvenile board, the judges of the district, criminal district, domestic relations, juvenile, and county courts and county courts at law shall designate one or more of their courts as the juvenile court, subject to Subsection (d) of this section.

(d) If the judge of a court designated in Subsection (b) or (c) of this section is not an attorney licensed in this state, there shall also be designated an alternate court, the judge of which is an attorney licensed in this state. The alternate juvenile court shall rule on motions and hold hearings as provided in Section 51.18 of this chapter.

(e) A designation made under Subsection (b) or (c) of this section may be changed from time to time by the authorized boards or judges for the convenience of the people and the welfare of children. However, there must be at all times a juvenile court designated for each county. It is the intent of the legislature that in selecting a court to be the juvenile court of each county, the selection shall be made as far as practicable so that the court designated as the juvenile court will be one which is presided over by a judge who has a sympathetic understanding of the problems of child welfare and that changes in the designation of juvenile courts be made only when the best interest of the public requires it.

(f) If the judge of the juvenile court or any alternate judge named under Subsection (b) or (c) of this section is not in the county or is otherwise unavailable, any magistrate may conduct the detention hearing provided for in Section 54.01 of this code.

(g) The juvenile board, or if there is no juvenile board, the juvenile court, may appoint a referee to conduct hearings under this title and in accordance with Section 54.10 of this code. The referee shall be an attorney licensed to practice law in this state. Payment of any referee services shall be provided from county funds.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973. Amended by Acts 1975, 64th Leg., p. 1357, ch. 514, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 2153, ch. 693, §§ 5 to 7, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1112, ch. 411, § 1, eff. June 15, 1977.]

§ 51.05. Court Sessions and Facilities

(a) The juvenile court shall be deemed in session at all times. Suitable quarters shall be provided by the commissioners court of each county for the hearing of cases and for the use of the judge, the probation officer, and other employees of the court.

(b) The juvenile court and the juvenile board shall report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and may make recommendations for their improvement.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973. Amended by Acts 1975, 64th Leg., p. 2154, ch. 693, § 8, eff. Sept. 1, 1975.]

§ 51.06. Venue

(a) A proceeding under this title shall be commenced in:

(1) the county in which the child resides; or

(2) the county in which the alleged delinquent conduct or conduct indicating a need for supervision occurred.

(b) An application for a writ of habeas corpus brought by or on behalf of a child who has been committed to an institution under the jurisdiction of the Texas Youth Commission and which attacks the validity of the judgment of commitment shall be brought in the county in which the court that entered the judgment of commitment is located.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973. Amended by Acts 1983, 68th Leg., p. 161, ch. 44, Art. 1, § 1, eff. April 26, 1983.]

§ 51.07. Transfer to Another County

(a) When a child has been found to have engaged in delinquent conduct or conduct indicating a need for supervision under Section 54.03 of this code, the juvenile court, with the consent of the child and appropriate adult given in accordance with Section 51.09 of this code, may transfer the case and transcripts of records and documents to the juvenile court of the county where the child resides for disposition of the case under Section 54.04 of this code.

(b) When a child who is on probation moves with his family from one county to another, the juvenile court may transfer the case to the juvenile court in the county of the child's new residence if the transfer is in the best interest of the child. In all other cases of transfer, consent of the receiving court is required. The transferring court shall forward transcripts of records and documents in the case to the judge of the receiving court.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

§ 51.08. Transfer from Criminal Court

If the defendant in a criminal proceeding is a child who is charged with an offense other than perjury or a traffic offense, unless he has been transferred to criminal court under Section 54.02 of this code, the court exercising criminal jurisdiction shall transfer the case to the juvenile court, together with a copy of the accusatory pleading and other papers, documents, and transcripts of testimony relating to

the case, and shall order that the child be taken to the place of detention designated by the juvenile court, or shall release him to the custody of his parent, guardian, or custodian, to be brought before the juvenile court at a time designated by that court.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

§ 51.09. Waiver of Rights

(a) Unless a contrary intent clearly appears elsewhere in this title, any right granted to a child by this title or by the constitution or laws of this state or the United States may be waived in proceedings under this title if:

(1) the waiver is made by the child and the attorney for the child;

(2) the child and the attorney waiving the right are informed of and understand the right and the possible consequences of waiving it;

(3) the waiver is voluntary; and

(4) the waiver is made in writing or in court proceedings that are recorded.

(b) Notwithstanding any of the provisions of Subsection (a) of this section, the statement of a child is admissible in evidence in any future proceeding concerning the matter about which the statement was given if:

(1) when the child is in a detention facility or other place of confinement or in the custody of an officer, the statement is made in writing and the statement shows that the child has at some time prior to the making thereof received from a magistrate a warning that:

(A) he may remain silent and not make any statement at all and that any statement he makes may be used in evidence against him;

(B) he has the right to have an attorney present to advise him either prior to any questioning or during the questioning;

(C) if he is unable to employ an attorney, he has the right to have an attorney to counsel with him prior to or during any interviews with peace officers or attorneys representing the state;

(D) he has the right to terminate the interview at any time;

(E) if he is 15 years of age or older at the time of the violation of a penal law of the grade of felony the juvenile court may waive its jurisdiction and he may be tried as an adult; and

(F) the statement must be signed in the presence of a magistrate by the child with no law enforcement officer or prosecuting attorney present. The magistrate must be fully convinced that the child understands the nature and contents of the statement and that the child is signing the same voluntarily. If such a statement is taken, the magistrate shall sign a written statement verifying the foregoing requisites have been met.

The child must knowingly, intelligently, and voluntarily waive these rights prior to and during the making of the statement and sign the statement in the presence of a magistrate who must certify that he has examined the child independent of any law enforcement officer or prosecuting attorney and determined that the child understands the nature and contents of the statement and has knowingly, intelligently, and voluntarily waived these rights.

(2) it be made orally and the child makes a statement of facts or circumstances that are found to be true, which conduct tends to establish his guilt, such as the finding of secreted or stolen property, or the instrument with which he states the offense was committed.

(3) the statement was res gestae of the delinquent conduct or the conduct indicating a need for supervision or of the arrest.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973. Amended by Acts 1975, 64th Leg., p. 2154, ch. 693, § 9, eff. Sept. 1, 1975.]

§ 51.10. Right to Assistance of Attorney; Compensation

(a) A child may be represented by an attorney at every stage of proceedings under this title, including:

(1) the detention hearing required by Section 54.01 of this code;

(2) the hearing to consider transfer to criminal court required by Section 54.02 of this code;

(3) the adjudication hearing required by Section 54.03 of this code;

(4) the disposition hearing required by Section 54.04 of this code;

(5) the hearing to modify disposition required by Section 54.05 of this code;

(6) hearings required by Chapter 55 of this code;

(7) habeas corpus proceedings challenging the legality of detention resulting from action under this title; and

(8) proceedings in a court of civil appeals or the Texas Supreme Court reviewing proceedings under this title.

(b) The child's right to representation by an attorney shall not be waived in:

(1) a hearing to consider transfer to criminal court as required by Section 54.02 of this code;

(2) an adjudication hearing as required by Section 54.03 of this code;

(3) a disposition hearing as required by Section 54.04 of this code;

(4) a hearing prior to commitment to the Texas Youth Commission as a modified disposition in accordance with Section 54.05(f) of this code; or

(5) hearings required by Chapter 55 of this code.

(c) If the child was not represented by an attorney at the detention hearing required by Section 54.01 of this code and a determination was made to detain the child, the child shall immediately be entitled to representation by an attorney. The court may order the retention of an attorney according to Section 51.10(d) of this code or appoint an attorney according to Section 51.10(f) of this code.

(d) The court shall order a child's parent or other person responsible for support of the child to employ an attorney to represent the child, if:

(1) the child is not represented by an attorney;

(2) after giving the appropriate parties an opportunity to be heard, the court determines that the parent or other person responsible for support of the child is financially able to employ an attorney to represent the child; and

(3) the child's right to representation by an attorney:

(A) has not been waived under Section 51.09 of this code; or

(B) may not be waived under Subsection (b) of this section.

(e) The court may enforce orders under Subsection (c) of this section by proceedings under Section 54.07 of this code or by appointing counsel and ordering the parent or other person responsible for support of the child to pay a reasonable attorney's fee set by the court. The order may be enforced under Section 54.07 of this code.

(f) The court shall appoint an attorney to represent the interest of a child entitled to representation by an attorney, if:

(1) the child is not represented by an attorney;

(2) the court determines that the child's parent or other person responsible for support of the child is financially unable to employ an attorney to represent the child; and

(3) the child's right to representation by an attorney:

(A) has not been waived under Section 51.09 of this code; or

(B) may not be waived under Subsection (b) of this section.

(g) The juvenile court may appoint an attorney in any case in which it deems representation necessary to protect the interests of the child.

(h) Any attorney representing a child in proceedings under this title is entitled to 10 days to prepare for any adjudication or transfer hearing under this title.

(i) Except as provided in Subsection (d) of this section, an attorney appointed under this section to represent the interests of a child shall be paid from the general fund of the county in which the proceedings were instituted according to the schedule in Article 26.05 of the Texas Code of Criminal Procedure, 1965. For this purpose, a bona fide appeal to a court of civil appeals or proceedings on the merits in the Texas Supreme Court are considered the equivalent of a bona fide appeal to the Texas Court of Criminal Appeals.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973. Amended by Acts 1983, 68th Leg., p. 161, ch. 44, Art. 1, § 2, eff. April 26, 1983.]

§ 51.11. Guardian Ad Litem

(a) If a child appears before the juvenile court without a parent or guardian, the court shall appoint a guardian ad litem to protect the interests of the child. The juvenile court need not appoint a guardian ad litem if a parent or guardian appears with the child.

(b) In any case in which it appears to the juvenile court that the child's parent or guardian is incapable or unwilling to make decisions in the best interest of the child with respect to proceedings under this title, the court may appoint a guardian ad litem to protect the interests of the child in the proceedings.

(c) An attorney for a child may also be his guardian ad litem. A law-enforcement officer, probation officer, or other employee of the juvenile court may not be appointed guardian ad litem.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

§ 51.12. Place and Conditions of Detention

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

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

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

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

(2) the requirements of Article 5115, Revised Civil Statutes of Texas, 1925, as amended, defin-

ing "safe and suitable jails," if the detention facility is a county jail; and

(3) recognized professional standards for the detention of children.

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

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

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973. Amended by Acts 1975, 64th Leg., p. 2155, ch. 693, §§ 10, 11, eff. Sept. 1, 1975.]

§ 51.13. Effect of Adjudication or Disposition

(a) An order of adjudication or disposition in a proceeding under this title is not a conviction of crime, and does not impose any civil disability ordinarily resulting from a conviction or operate to disqualify the child in any civil service application or appointment.

(b) The adjudication or disposition of a child or evidence adduced in a hearing under this title may be used only in subsequent proceedings under this title in which the child is a party or in subsequent sentencing proceedings in criminal court against the child to the extent permitted by the Texas Code of Criminal Procedure, 1965.

(c) A child may not be committed or transferred to a penal institution or other facility used primarily for the execution of sentences of persons convicted of crime, except:

(1) for temporary detention in a jail or lockup pending juvenile court hearing or disposition under conditions meeting the requirements of Section 51.12 of this code; or

(2) after transfer for prosecution in criminal court under Section 54.02 of this code.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

§ 51.14. Files and Records

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

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

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

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

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

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

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

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

(3) an attorney for the child;

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

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

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

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

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

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

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

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973; Acts 1983, 68th Leg., p. 4583, ch. 769, § 1, eff. June 19, 1983.]

§ 51.15. Fingerprints and Photographs

(a) No child may be fingerprinted without the consent of the juvenile court except as provided in Subsection (f) of this section. However, if a child 15 years of age or older is referred to the juvenile court for a felony, his fingerprints may be taken and filed by a law-enforcement officer investigating the case.

(b) Except as provided in Subsection (h) of this section, no child taken into custody may be photographed without the consent of the juvenile court unless the child is transferred to criminal court for prosecution under Section 54.02 of this code.

(c) Fingerprint and photograph files or records of children shall be kept separate from those of adults,

and fingerprints or photographs known to be those of a child shall be maintained on a local basis only and not sent to a central state or federal depository.

(d) Fingerprint and photograph files or records of children are subject to inspection as provided in Subsections (a) and (d) of Section 51.14 of this code.

(e) Fingerprints and photographs of a child shall be removed from files or records and destroyed if:

(1) a petition alleging that the child engaged in delinquent conduct or conduct indicating a need for supervision is not filed, or the proceedings are dismissed after a petition is filed, or the child is found not to have engaged in the alleged conduct; or

(2) the person reaches 18 years of age and there is no record that he committed a criminal offense after reaching 17 years of age.

(f) If latent fingerprints are found during the investigation of an offense, and a law-enforcement officer has reasonable cause to believe that they are those of a particular child, if otherwise authorized by law, he may fingerprint the child regardless of the age or offense for purpose of immediate comparison with the latent fingerprints. If the comparison is negative, the fingerprint card and other copies of the fingerprints taken shall be destroyed immediately. If the comparison is positive, and the child is referred to the juvenile court, the fingerprint card and other copies of the fingerprints taken shall be delivered to the court for disposition. If the child is not referred to the court, the fingerprint card and other copies of the fingerprints taken shall be destroyed immediately.

(g) When destruction of fingerprints or photographs is required by Subsection (e), (f), or (h) of this section, the agency with custody of the fingerprints or photographs shall proceed with destruction without judicial order. However, if the fingerprints or photographs are not destroyed, the juvenile court, on its own motion or on application by the person fingerprinted or photographed, shall order the destruction as required by this section.

(h) If, during the investigation of a criminal offense, a law enforcement officer has reason to believe that a photograph of a child taken into custody or detained as permitted under this title will assist in the identification of the offender and if not otherwise prohibited by law, the officer may photograph the face of the child. If the child is not identified as an offender, the photograph and its negative shall be destroyed immediately. If the child is identified through the photograph and the child is referred to the juvenile court for the offense investigated, the photograph and its negative shall be delivered to the juvenile court for disposition. If the child is not referred to the juvenile court for the offense investigated, the photograph and its negative shall be destroyed immediately.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973. Amended by Acts 1975, 64th Leg., p. 2156, ch. 693, § 12, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1101, ch. 517, §§ 1 to 3, eff. June 11, 1979.]

§ 51.16. Sealing of Files and Records

(a) On the application of a person who has been found to have engaged in delinquent conduct or conduct indicating a need for supervision, or a person taken into custody to determine whether he engaged in delinquent conduct or conduct indicating a need for supervision, or on the juvenile court's own motion, the court, after hearing, shall order the sealing of the files and records in the case, including those specified in Sections 51.14 and 51.15 of this code, if the court finds that:

(1) two years have elapsed since final discharge of the person, or since the last official action in his case if there was no adjudication;

(2) since the time specified in Subdivision (1) of this subsection, he has not been convicted of a felony or a misdemeanor involving moral turpitude or found to have engaged in delinquent conduct or conduct indicating a need for supervision, and no proceeding is pending seeking conviction or adjudication; and

(3) it is unlikely the person will engage in further delinquent conduct or conduct indicating a need for supervision or will commit a felony or a misdemeanor involving moral turpitude.

(b) The court may grant the relief authorized in Subsection (a) of this section at any time after final discharge of the person or after the last official action in his case if there was no adjudication.

(c) Reasonable notice of the hearing shall be given to:

(1) the person who made the application or who is the subject of the files or records named in the motion;

(2) the prosecuting attorney for the juvenile court;

(3) the authority granting the discharge if the final discharge was from an institution or from parole;

(4) the public or private agency or institution having custody of files or records named in the application or motion; and

(5) the law-enforcement agency having custody of files or records named in the application or motion.

(d) Copies of the sealing order shall be sent to each agency or official therein named.

(e) On entry of the order:

(1) all law-enforcement, prosecuting attorney, clerk of court, and juvenile court files and records

ordered sealed shall be sent to the court issuing the order;

(2) all files and records of a public or private agency or institution ordered sealed shall be sent to the court issuing the order;

(3) all index references to the files and records ordered sealed shall be deleted;

(4) the juvenile court, clerk of court, prosecuting attorney, public or private agency or institution, and law-enforcement officers and agencies shall properly reply that no record exists with respect to such person upon inquiry in any matter; and

(5) the adjudication shall be vacated and the proceeding dismissed and treated for all purposes, including the purpose of showing a prior finding of delinquency, as if it had never occurred.

(f) Inspection of the sealed files and records may be permitted thereafter by an order of the juvenile court on the petition of the person who is the subject of the files or records and only by those persons named in the order.

(g) On the final discharge of a child or on the last official action in his case if there is no adjudication, the child shall be given a written explanation of his rights under this section and a copy of the provisions of this section.

(h) A person whose files and records have been sealed under this Act is not required in any proceeding or in any application for employment, information, or licensing to state that he has been the subject of a proceeding under this Act; and any statement that he has never been found to be a delinquent child shall never be held against the person in any criminal or civil proceeding.

(i) On the motion of a person in whose name files and records are kept or on the court's own motion, the court may order the destruction of all files and records concerning a person who has been adjudicated to be a child in need of supervision or a delinquent child if:

(1) seven years have elapsed since the child's 16th birthday; and

(2) the person has not been convicted of a felony.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973. Amended by Acts 1975, 64th Leg., p. 2156, ch. 693, § 13, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 708, ch. 307, § 1, eff. Aug. 27, 1979.]

§ 51.17. Procedure

Except when in conflict with a provision of this title, the Texas Rules of Civil Procedure govern proceedings under this title. Particular reference is made to the burden of proof to be borne by the state in adjudicating a child to be delinquent or in need of supervision [Section 54.03(f)].

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

§ 51.18. Powers and Duties of Alternate Juvenile Court

If a juvenile court, the judge of which is not an attorney licensed in this state, issues an order that may be appealed as provided in Subsection (c) of Section 56.01 of this code, the child shall have a right to a trial de novo before the alternate juvenile court or may appeal the order of the court as provided in Section 56.01.

[Acts 1977, 65th Leg., p. 1112, ch. 411, § 2, eff. June 15, 1977.]

CHAPTER 52. PROCEEDINGS BEFORE AND INCLUDING REFERRAL TO JUVENILE COURT

Sec.
52.01. Taking Into Custody; Issuance of Warning Notice.
52.02. Release or Delivery to Court.
52.03. Disposition Without Referral to Court.
52.04. Referral to Juvenile Court.

§ 52.01. Taking Into Custody; Issuance of Warning Notice

(a) A child may be taken into custody:

(1) pursuant to an order of the juvenile court under the provisions of this subtitle;

(2) pursuant to the laws of arrest;

(3) by a law-enforcement officer if there are reasonable grounds to believe that the child has engaged in delinquent conduct or conduct indicating a need for supervision; or

(4) by a probation officer if there are reasonable grounds to believe that the child has violated a condition of probation imposed by the juvenile court.

(b) The taking of a child into custody is not an arrest except for the purpose of determining the validity of taking him into custody or the validity of a search under the laws and constitution of this state or of the United States.

(c) A law-enforcement officer authorized to take a child into custody under Subdivisions (2) and (3) of Subsection (a) of this section may issue a warning notice to the child in lieu of taking him into custody if:

(1) guidelines for warning disposition have been issued by the law-enforcement agency in which the officer works;

(2) the guidelines have been approved by the juvenile court of the county in which the disposition is made;

(3) the disposition is authorized by the guidelines;

(4) the warning notice identifies the child and describes his alleged conduct;

(5) a copy of the warning notice is sent to the child's parent, guardian, or custodian as soon as practicable after disposition; and

(6) a copy of the warning notice is filed with the law-enforcement agency and the office or official designated by the juvenile court.

(d) A warning notice filed with the office or official designated by the juvenile court may be used as the basis of further action if necessary.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

§ 52.02. Release or Delivery to Court

(a) A person taking a child into custody, without unnecessary delay and without first taking the child elsewhere, shall do one of the following:

(1) release the child to his parent, guardian, custodian, or other responsible adult upon that person's promise to bring the child before the juvenile court when requested by the court;

(2) bring the child before the office or official designated by the juvenile court;

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

(4) 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

(5) dispose of the case under Section 52.03 of this code.

(b) A person taking a child into custody shall promptly give notice of his action and a statement of the reason for taking the child into custody, to:

(1) the child's parent, guardian, or custodian; and

(2) the office or official designated by the juvenile court.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

§ 52.03. Disposition Without Referral to Court

(a) A law-enforcement officer authorized by this title to take a child into custody may dispose of the case of a child taken into custody without referral to juvenile court, if:

(1) guidelines for such disposition have been issued by the law-enforcement agency in which the officer works;

(2) the guidelines have been approved by the juvenile court of the county in which the disposition is made;

(3) the disposition is authorized by the guidelines; and

(4) the officer makes a written report of his disposition to the law-enforcement agency, identifying the child and specifying the grounds for believing that the taking into custody was authorized.

(b) No disposition authorized by this section may involve:

(1) keeping the child in law-enforcement custody; or

(2) requiring periodic reporting of the child to a law-enforcement officer, law-enforcement agency, or other agency.

(c) A disposition authorized by this section may involve:

(1) referral of the child to an agency other than the juvenile court; or

(2) a brief conference with the child and his parent, guardian, or custodian.

(d) Statistics indicating the number and kind of dispositions made by a law-enforcement agency under the authority of this section shall be reported at least annually to the office or official designated by the juvenile court, as ordered by the court.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

§ 52.04. Referral to Juvenile Court

(a) The following shall accompany referral of a child or a child's case to the office or official designated by the juvenile court or be provided as quickly as possible after referral:

(1) all information in the possession of the person or agency making the referral pertaining to the identity of the child and his address, the name and address of the child's parent, guardian, or custodian, the names and addresses of any witnesses, and the child's present whereabouts;

(2) a complete statement of the circumstances of the alleged delinquent conduct or conduct indicating a need for supervision;

(3) when applicable, a complete statement of the circumstances of taking the child into custody; and

(4) when referral is by an officer of a law-enforcement agency, a complete statement of all prior contacts with the child by officers of that law-enforcement agency.

(b) The office or official designated by the juvenile court may refer the case to a law-enforcement agency for the purpose of conducting an investigation to obtain necessary information.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

CHAPTER 53. PROCEEDINGS PRIOR TO JUDICIAL PROCEEDINGS

Sec.

Sec.
53.04. Court Petition; Answer.
53.05. Time Set for Hearing.
53.06. Summons.
53.07. Service of Summons.

§ 53.01. Preliminary Investigation and Determinations; Notice to Parents

(a) On referral of a child or a child's case to the office or official designated by the juvenile court, the intake officer, probation officer, or other person authorized by the court shall conduct a preliminary investigation to determine whether:

(1) the person referred to juvenile court is a child within the meaning of this title;

(2) there is probable cause to believe the child engaged in delinquent conduct or conduct indicating a need for supervision; and

(3) further proceedings in the case are in the interest of the child or the public.

(b) If it is determined that the person is not a child, or there is no probable cause, or further proceedings are not warranted, the child shall immediately be released and proceedings terminated.

(c) When custody of a child is given to the office or official designated by the juvenile court, the intake officer, probation officer, or other person authorized by the court shall promptly give notice of the whereabouts of the child and a statement of the reason he was taken into custody to the child's parent, guardian, or custodian unless the notice given under Section 52.02(b) of this code provided fair notice of the child's present whereabouts.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

§ 53.02. Release from Detention

(a) If a child is brought before the court or delivered to a detention facility designated by the court, the intake or other authorized officer of the court shall immediately make an investigation and shall release the child unless it appears that his detention is warranted under Subsection (b) of this section. The release may be conditioned upon requirements reasonably necessary to insure the child's appearance at later proceedings, but the conditions of the release must be in writing and filed with the office or official designated by the court and a copy furnished to the child.

(b) A child taken into custody may be detained prior to hearing on the petition only if:

(1) he is likely to abscond or be removed from the jurisdiction of the court;

(2) suitable supervision, care, or protection for him is not being provided by a parent, guardian, custodian, or other person;

(3) he has no parent, guardian, custodian, or other person able to return him to the court when required;

(4) he is accused of committing a felony offense and may be dangerous to himself or others if released; or

(5) he has previously been found to be a delinquent child or has previously been convicted of a penal offense punishable by a term in jail or prison and is likely to commit an offense if released.

(c) If the child is not released, a request for detention hearing shall be made and promptly presented to the court, and an informal detention hearing as provided in Section 54.01 of this code shall be held promptly, but not later than the time required by Section 54.01 of this code.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973. Amended by Acts 1979, 66th Leg., p. 1102, ch. 518, § 1, eff. June 11, 1979; Acts 1981, 67th Leg., p. 291, ch. 115, § 1, eff. Aug. 31, 1981.]

§ 53.03. Intake Conference and Adjustment

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

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

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

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

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

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

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

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

(2) voluntary community service restitution by the child.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973. Amended by Acts 1983, 68th Leg., p. 3261, ch. 565, § 1, eff. Sept. 1, 1983.]

Section 5 of the 1983 amendatory act provides:

"This Act applies only to a child's conduct that occurs and civil liability for a cause of action that arises on or after the effective date of this Act."

§ 53.04. Court Petition; Answer

(a) If the preliminary investigation, required by Section 53.01 of this code results in a determination that further proceedings are authorized and warranted, a petition for an adjudication or transfer hearing of a child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision may be made as promptly as practicable by a prosecuting attorney who has knowledge of the facts alleged or is informed and believes that they are true.

(b) The proceedings shall be styled "In the matter of _____."

(c) The petition may be on information and belief.

(d) The petition must state:

(1) with reasonable particularity the time, place, and manner of the acts alleged and the penal law or standard of conduct allegedly violated by the acts;

(2) the name, age, and residence address, if known, of the child who is the subject of the petition;

(3) the names and residence addresses, if known, of the parent, guardian, or custodian of the child and of the child's spouse, if any; and

(4) if the child's parent, guardian, or custodian does not reside or cannot be found in the state, or if their places of residence are unknown, the name and residence address of any known adult relative residing in the county or, if there is none, the name and residence address of the known adult relative residing nearest to the location of the court.

(e) An oral or written answer to the petition may be made at or before the commencement of the hearing. If there is no answer, a general denial of the alleged conduct is assumed.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

§ 53.05. Time Set for Hearing

(a) After the petition has been filed, the juvenile court shall set a time for the hearing.

(b) The time set for the hearing shall not be later than 10 days after the day the petition was filed if:

(1) the child is in detention; or

(2) the child will be taken into custody under Section 53.06(d) of this code.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

§ 53.06. Summons

(a) The juvenile court shall direct issuance of a summons to:

(1) the child named in the petition;

(2) the child's parent, guardian, or custodian;

(3) the child's guardian ad litem; and

(4) any other person who appears to the court to be a proper or necessary party to the proceeding.

(b) The summons must require the persons served to appear before the court at the time set to answer the allegations of the petition. A copy of the petition must accompany the summons.

(c) The court may endorse on the summons an order directing the parent, guardian, or custodian of the child to appear personally at the hearing and directing the person having the physical custody or control of the child to bring the child to the hearing. A person who violates an order entered under this subsection may be proceeded against under Section 54.07 of this code.

(d) If it appears from an affidavit filed or from sworn testimony before the court that immediate detention of the child is warranted under Section 53.02(b) of this code, the court may endorse on the summons an order that a law-enforcement officer shall serve the summons and shall immediately take the child into custody and bring him before the court.

(e) A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

§ 53.07. Service of Summons

(a) If a person to be served with a summons is in this state and can be found, the summons shall be served upon him personally at least two days before the day of the adjudication hearing. If he is in this state and cannot be found, but his address is known or can with reasonable diligence be ascertained, the summons may be served on him by mailing a copy by registered or certified mail, return receipt requested, at least five days before the day of the hearing. If he is outside this state but he can be found or his address is known, or his whereabouts or address can with reasonable diligence be ascertained, service of the summons may be made either by delivering a copy to him personally or mailing a copy to him by registered or certified mail, return receipt requested, at least five days before the day of the hearing.

(b) The juvenile court has jurisdiction of the case if after reasonable effort a person other than the child cannot be found nor his post-office address ascertained, whether he is in or outside this state.

(c) Service of the summons may be made by any suitable person under the direction of the court.

(d) The court may authorize payment from the general funds of the county of the costs of service and of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

(e) Witnesses may be subpoenaed in accordance with the Texas Code of Criminal Procedure, 1965.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

CHAPTER 54. JUDICIAL PROCEEDINGS

Sec.

§ 54.01. Detention Hearing

(a) If the child is not released under Section 53.02 of this code, a detention hearing without a jury shall be held promptly, but not later than the second working day after he is taken into custody; provided, however, that when a child is detained on a Friday or Saturday, then such detention hearing shall be held on the first working day after the child is taken into custody.

(b) Reasonable notice of the detention hearing, either oral or written, shall be given, stating the time, place, and purpose of the hearing. Notice shall be given to the child and, if they can be found, to his parents, guardian, or custodian. Prior to the commencement of the hearing, the court shall inform the parties of the child's right to counsel and to appointed counsel if they are indigent and of the child's right to remain silent with respect to any allegations of delinquent conduct or conduct indicating a need for supervision.

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

(d) A detention hearing may be held without the presence of the child's parents if the court has been unable to locate them. If no parent or guardian is present, the court shall appoint counsel or a guardian ad litem for the child.

(e) At the conclusion of the hearing, the court shall order the child released from detention unless it finds that:

(1) he is likely to abscond or be removed from the jurisdiction of the court;

(2) suitable supervision, care, or protection for him is not being provided by a parent, guardian, custodian, or other person;

(3) he has no parent, guardian, custodian, or other person able to return him to the court when required;

(4) he is accused of committing a felony offense and may be dangerous to himself or others if released; or

(5) he has previously been found to be a delinquent child or has previously been convicted of a penal offense punishable by a term in jail or prison and is likely to commit an offense if released.

(f) A release may be conditioned on requirements reasonably necessary to insure the child's appearance at later proceedings, but the conditions of the release must be in writing and a copy furnished to the child.

(g) No statement made by the child at the detention hearing shall be admissible against the child at any other hearing.

(h) A detention order extends to the conclusion of the disposition hearing, if there is one, but in no event for more than 10 days. Further detention orders may be made following subsequent detention hearings. Subsequent detention hearings may be waived in accordance with the requirements of Section 51.09 of this code, but each detention order shall extend for no more than 10 days.

(i) A child in custody may be detained for as long as 10 days without the hearing described in Subsection (a) of this section if:

(1) a written request for shelter in detention facilities pending arrangement of transportation to his place of residence in another state or country or another county of this state is voluntarily executed by the child not later than the next working day after he was taken into custody;

(2) the request for shelter contains:

(A) a statement by the child that he voluntarily agrees to submit himself to custody and detention for a period of not longer than 10 days without a detention hearing;

(B) an allegation by the person detaining the child that the child has left his place of residence in another state or country or another county of this state, that he is in need of shelter, and that an effort is being made to arrange transportation to his place of residence; and

(C) a statement by the person detaining the child that he has advised the child of his right to demand a detention hearing under Subsection (a) of this section; and

(3) the request is signed by the juvenile court judge to evidence his knowledge of the fact that the child is being held in detention.

(j) The request for shelter may be revoked by the child at any time, and on such revocation, if further detention is necessary, a detention hearing shall be held not later than the next working day in accordance with Subsections (a) through (g) of this section.

(k) Notwithstanding anything in this title to the contrary, the child may sign a request for shelter without the concurrence of an adult specified in Section 51.09 of this code.

(*l*) The juvenile board or, if there is none, the juvenile court, may appoint a referee to conduct the detention hearing. The referee shall be an attorney licensed to practice law in this state. Such payment or additional payment as may be warranted for referee services shall be provided from county funds. Before commencing the detention hearing, the referee shall inform the parties who have appeared that they are entitled to have the hearing before the juvenile court judge or a substitute judge authorized by Section 51.04(f) of this code. If a party objects to the referee conducting the detention hearing, an authorized judge shall conduct the hearing within 24 hours. At the conclusion of the hearing, the referee shall transmit written findings and recommendations to the juvenile court judge or substitute judge. The juvenile court judge or substitute judge shall adopt, modify, or reject the referee's recommendations within 24 hours. Failure to act within that time results in release of the child by operation of law. A recommendation that the child be released operates to secure his immediate release, subject to the power of the juvenile court judge or substitute judge to reject or modify that recommendation. The effect of an order detaining a child shall be computed from the time of the hearing before the referee.

(m) The detention hearing required in this section may be held in the county of the designated place of detention where the child is being held even though the designated place of detention is outside the county of residence of the child or the county in which the alleged delinquent conduct or conduct indicating a need for supervision occurred.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973. Amended by Acts 1975, 64th Leg., p. 2156, ch. 693, §§ 14, 15, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1102, ch. 518, § 2, eff. June 11, 1979.]

§ 54.02. Waiver of Jurisdiction and Discretionary Transfer to Criminal Court

(a) The juvenile court may waive its exclusive original jurisdiction and transfer a child to the appropriate district court or criminal district court for criminal proceedings if:

(1) the child is alleged to have violated a penal law of the grade of felony;

(2) the child was 15 years of age or older at the time he is alleged to have committed the offense and no adjudication hearing has been conducted concerning that offense; and

(3) after full investigation and hearing the juvenile court determines that because of the seriousness of the offense or the background of the child the welfare of the community requires criminal proceedings.

(b) The petition and notice requirements of Sections 53.04, 53.05, 53.06, and 53.07 of this code must be satisfied, and the summons must state that the hearing is for the purpose of considering discretionary transfer to criminal court.

(c) The juvenile court shall conduct a hearing without a jury to consider transfer of the child for criminal proceedings.

(d) Prior to the hearing, the juvenile court shall order and obtain a complete diagnostic study, social evaluation, and full investigation of the child, his circumstances, and the circumstances of the alleged offense.

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

(f) In making the determination required by Subsection (a) of this section, the court shall consider, among other matters:

(1) whether the alleged offense was against person or property, with greater weight in favor of transfer given to offenses against the person;

(2) whether the alleged offense was committed in an aggressive and premeditated manner;

(3) whether there is evidence on which a grand jury may be expected to return an indictment;

(4) the sophistication and maturity of the child;

(5) the record and previous history of the child; and

(6) the prospects of adequate protection of the public and the likelihood of the rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court.

(g) If the juvenile court retains jurisdiction, the child is not subject to criminal prosecution at any time for any offense alleged in the petition or for any offense within the knowledge of the juvenile court judge as evidenced by anything in the record of the proceedings.

(h) If the juvenile court waives jurisdiction, it shall state specifically in the order its reasons for waiver and certify its action, including the written order and findings of the court, and transfer the child to the appropriate court for criminal proceedings. On transfer of the child for criminal proceedings, he shall be dealt with as an adult and in accordance with the Texas Code of Criminal Procedure, 1965. The transfer of custody is an arrest. The examining trial shall be conducted by the court to which the case was transferred, which may remand the child to the jurisdiction of the juvenile court.

(i) If the child's case is brought to the attention of the grand jury and the grand jury does not indict for the offense charged in the complaint forwarded by the juvenile court, the district court or criminal district court shall certify the grand jury's failure to indict to the juvenile court. On receipt of the certification, the juvenile court may resume jurisdiction of the case.

(j) The juvenile court may waive its exclusive original jurisdiction and transfer a person to the appropriate district court or criminal district court for criminal proceedings if:

(1) the person is 18 years of age or older;

(2) the person was 15 years of age or older and under 17 years of age at the time he is alleged to have committed a felony;

(3) no adjudication concerning the alleged offense has been made or no adjudication hearing concerning the offense has been conducted; and

(4) the juvenile court finds from a preponderance of the evidence that after due diligence of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person because:

(A) the state did not have probable cause to proceed in juvenile court and new evidence has been found since the 18th birthday of the person; or

(B) the person could not be found.

(k) The petition and notice requirements of Sections 53.04, 53.05, 53.06, and 53.07 of this code must be satisfied, and the summons must state that the hearing is for the purpose of considering waiver of jurisdiction under Subsection (j) of this section.

(*l*) The juvenile court shall conduct a hearing without a jury to consider waiver of jurisdiction under Subsection (j) of this section.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973. Amended by Acts 1975, 64th Leg., p. 2156, ch. 693, § 16, eff. Sept. 1, 1975.]

§ 54.03. Adjudication Hearing

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

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

(1) the allegations made against the child;

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

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

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

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

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

(c) Trial shall be by jury unless jury is waived in accordance with Section 51.09 of this code. Jury verdicts under this title must be unanimous.

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

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

(f) At the conclusion of the adjudication hearing, the court or jury shall find whether or not the child has engaged in delinquent conduct or conduct indicating a need for supervision. The finding must be based on competent evidence admitted at the hearing. The child shall be presumed to be innocent of the charges against him and no finding that a child

has engaged in delinquent conduct or conduct indicating a need for supervision may be returned unless the state has proved such beyond a reasonable doubt. In all jury cases the jury will be instructed that the burden is on the state to prove that a child has engaged in delinquent conduct or is in need of supervision beyond a reasonable doubt.

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

(h) If the finding is that the child did engage in delinquent conduct or conduct indicating a need for supervision, the court or jury shall state which of the allegations in the petition were found to be established by the evidence. The court shall also set a date and time for the disposition hearing.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973. Amended by Acts 1975, 64th Leg., p. 2157, ch. 693, § 17, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1098, ch. 514, § 1, eff. Aug. 27, 1979.]

§ 54.04. Disposition Hearing

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

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

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

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

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

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

(B) in a suitable foster home; or

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

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

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

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

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

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

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

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973. Amended by Acts 1975, 64th Leg., p. 2158, ch. 693, § 23, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 1802, ch. 394, § 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 161, ch. 44, Art. 1, § 3, eff. April 26, 1983; Acts 1983, 68th Leg., p. 3261, ch. 565, § 2, eff. Sept. 1, 1983.]

Section 5 of Acts 1983, 68th Leg., p. 3265, ch. 565, provides:

"This Act applies only to a child's conduct that occurs and civil liability for a cause of action that arises on or after the effective date of this Act."

§ 54.041. Orders Affecting Parents and Others

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

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

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

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

(b) If a child is found to have engaged in delinquent conduct arising from the commission of an offense in which property damage or loss or personal injury occurred, the juvenile court, on notice to all persons affected and on hearing, may order the child or a parent to make full or partial restitution to the victim of the offense. The program of restitution must promote the rehabilitation of the child, be appropriate to the age and physical, emotional, and mental abilities of the child, and not conflict with the child's schooling. When practicable and subject to court supervision, the court may approve a restitution program based on a settlement between the child and the victim of the offense. An order under this subsection may provide for periodic payments by the child or a parent of the child for the period specified in the order but that period may not extend past the 18th birthday of the child. If the child or parent is unable to make full or partial restitution or if a restitution order is not appropriate under the circumstances, the court may order the child to render personal services to a charitable or educational institution in the manner prescribed in the court order in lieu of restitution. Restitution under this section is cumulative of any other remedy allowed by law and may be used in addition to other remedies; except that a victim of an offense is not entitled to receive more than actual damages under a juvenile court order. A city, town, or county that establishes a program to assist children in rendering personal services to a charitable or educational institution as authorized by this subsection may purchase insurance policies protecting the city, town, or county against claims brought by a person other than the child for a cause ofaction that arises from an act of the child while rendering those services. The city, town, or county is not liable under this Act to the extent that damages are recoverable under a contract of insurance or under a plan of self-insurance authorized by statute. The liability of the city, town, or county for a cause of action that arises from an action of the child while rendering those services may not exceed $100,000 to a single person and $300,000 for a single occurrence in the case of personal injury or death, and $10,000 for a single occurrence of property damage. Liability may not extend to punitive or exemplary damages. This subsection does not waive a defense, immunity, or jurisdictional bar available to the city, town, or county or its officers or employees, nor shall this Act be construed to waive, repeal, or modify any provision of the Texas Tort Claims Act, as amended (Article 6252–19, Vernon's Texas Civil Statutes).

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

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

[Acts 1975, 64th Leg., p. 2157, ch. 693, § 18, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 338, ch. 154, § 2, eff. Sept. 1, 1979; Acts 1983, 68th Leg., p. 528, ch. 110, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 3262, ch. 565, § 3, eff. Sept. 1, 1983.]

Section 2 of Acts 1983, 68th Leg., p. 529, ch. 110, provides:

"This Act applies to suits in which a finding of delinquency or that a child is a child in need of supervision is made on or after the effective date of this Act."

Section 5 of Acts 1983, 68th Leg., p. 3265, ch. 565, provides:

"This Act applies only to a child's conduct that occurs and civil liability for a cause of action that arises on or after the effective date of this Act."

§ 54.042. License Suspension

(a) When a child has been found to have engaged in conduct that violates the laws of this state prohibiting driving while intoxicated, the juvenile court shall order the Department of Public Safety to suspend the child's license or permit, or if the child does not have a license or permit, to deny the issuance of a license or permit to the child.

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

(1) not less than 90 days or more than 365 days; or

(2) if the court determines that the child has previously been found to have engaged in conduct violating the same laws, until the child reaches the age at which he may legally purchase alcoholic beverages or for a period of 365 days, whichever is longer.

(c) The court may defer the issuance of an order described by Subdivision (1) of Subsection (b) of this section if the court orders the child to attend and successfully complete the educational program authorized by Section 6c, Article 42.13, Code of Criminal Procedure, 1965. If at any time the court determines that the child is not making a good faith effort to successfully complete the educational program, it may issue the order for the period specified in Subdivision (1) of Subsection (b).

[Acts 1983, 68th Leg., p. 1605, ch. 303, § 25, eff. Jan. 1, 1984.]

§ 54.05. Hearing to Modify Disposition

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

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

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

(b) All dispositions automatically terminate when the child reaches his 18th birthday.

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

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

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

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

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

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

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

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973. Amended by Acts 1979, 66th Leg., p. 1829, ch. 743, § 1, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 162, ch. 44, Art. 1, § 4, eff. April 26, 1983.]

§ 54.06. Judgments for Support

(a) When a child has been placed on probation outside his home, the juvenile court, after giving the parent or other person responsible for the child's support a reasonable opportunity to be heard, may order the parent or other person to pay in a manner directed by the court a reasonable sum for the support in whole or in part of the child.

(b) Orders for support may be enforced as provided in Section 54.07 of this code.

(c) Nothing in this section shall be construed so as to authorize support payments for a child committed to the Texas Youth Commission.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973. Amended by Acts 1983, 68th Leg., p. 163, ch. 44, Art. 1, § 5, eff. April 26, 1983.]

§ 54.061. Payment of Probation Fees

(a) If a child is placed on probation under Section 54.04(d)(1) of this code, the juvenile court, after giving the child, parent, or other person responsible for the child's support a reasonable opportunity to be heard, may order the child, parent, or other person, if financially able to do so, to pay to the court a fee of not more than $15 a month during the period that the child continues on probation.

(b) Orders for the payment of fees under this section may be enforced as provided by Section 54.07 of this code.

(c) The court shall deposit the fees received under this section in the county treasury to the credit of a special fund that may be used only for juvenile probation or community-based juvenile corrections services or facilities in which a juvenile may be required to live while under court supervision.

[Acts 1979, 66th Leg., p. 338, ch. 154, § 1, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 2425, ch. 617, § 4, eff. Sept. 1, 1981.]

§ 54.07. Enforcement of Order

(a) Any order of the juvenile court may be enforced by contempt.

(b) The juvenile court may enforce its order for support or for the payment of restitution or probation fees by civil contempt proceedings after 10 days' notice to the defaulting person of his failure or refusal to carry out the terms of the order.

(c) On the motion of the juvenile court or any person or agency entitled to receive restitution or probation payments or payments for the benefit of a child, the juvenile court may render judgment against a defaulting person for any amount unpaid and owing after 10 days' notice to the defaulting person of his failure or refusal to carry out the terms of the order. The judgment may be enforced

by any means available for the enforcement of judgments for other debts.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973. Amended by Acts 1979, 66th Leg., p. 339, ch. 154, § 3, eff. Sept. 1, 1979.]

§ 54.08. Public Access to Court Hearings

The general public may be excluded from hearings under this title. The court in its discretion may admit such members of the general public as it deems proper.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

§ 54.09. Recording of Proceedings

All judicial proceedings under this chapter except detention hearings shall be recorded by stenographic notes or by electronic, mechanical, or other appropriate means. Upon request of any party, a detention hearing shall be recorded.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

§ 54.10. Hearings Before Referee

(a) The hearing provided in Sections 54.01, 54.03, and 54.04 of Title 3 of this code and the hearing provided in Article IV, Article V, and Article VI of the Uniform Interstate Compact on Juveniles (Chapter 25 of this code) may be held by a referee appointed in accordance with Section 51.04(g) of this code provided:

(1) the parties have been informed by the referee that they are entitled to have the hearing before the juvenile court judge or in the case of a detention hearing provided for in Section 54.01 of this code, a substitute judge as authorized by Section 51.04(f) of this code; or

(2) the child and the attorney for the child have in accordance with the requirements of Section 51.09 of this code waived the right to have the hearing before the juvenile court judge or substitute judge.

(b) At the conclusion of the hearing, the referee shall transmit written findings and recommendations to the juvenile court judge. The juvenile court judge shall adopt, modify, or reject the referee's recommendations within 24 hours. In the same case of a detention hearing as authorized by Section 54.01 of this code, the failure of the juvenile court to act within 24 hours results in release of the child by operation of law and a recommendation that the child be released operates to secure his immediate release subject to the power of the juvenile court judge to modify or reject that recommendation.

[Acts 1975, 64th Leg., p. 2157, ch. 693, § 19, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1830, ch. 743, § 2, eff. Aug. 27, 1979.]

CHAPTER 55. PROCEEDINGS CONCERNING CHILDREN WITH MENTAL ILLNESS, RETARDATION, DISEASE, OR DEFECT

Sec.

§ 55.01. Physical or Mental Examination

(a) At any stage of the proceedings under this title, the juvenile court may cause the child to be examined by a physician, psychiatrist, or psychologist.

(b) If an examination ordered under Subsection (a) of this section is to determine whether the child is mentally retarded, the examination must consist of a comprehensive diagnosis and evaluation as defined in the Mentally Retarded Persons Act [1] and shall be conducted at a facility approved by the Texas Department of Mental Health and Mental Retardation.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973. Amended by Acts 1977, 65th Leg., p. 1453, ch. 591, § 1, eff. Jan. 1, 1978.]

[1] See Civil Statutes, art. 5547-300.

§ 55.02. Mentally Ill Child

(a) If it appears to the juvenile court, on suggestion of a party or on the court's own notice, that a child alleged by petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision may be mentally ill, the court shall initiate proceedings to order temporary hospitalization of the child for observation and treatment.

(b) The Texas Mental Health Code (5547-1 et seq., Vernon's Texas Civil Statutes) governs proceedings for temporary hospitalization except that the juvenile court shall conduct the proceedings whether or not the juvenile court is also a county court.

(c) If the juvenile court enters an order of temporary hospitalization of the child, the child shall be cared for, treated, and released in conformity to the Texas Mental Health Code except:

(1) a juvenile court order of temporary hospitalization of a child automatically expires when the child becomes 18 years of age;

(2) the head of a mental hospital shall notify the juvenile court that ordered temporary hospitalization at least 10 days prior to discharge of the child; and

(3) appeal from juvenile court proceedings under this section shall be to the court of civil appeals as in other proceedings under this title.

(d) If the juvenile court orders temporary hospitalization of a child, the proceedings under this title then pending in juvenile court shall be stayed.

(e) If the child is discharged from the mental hospital before reaching 18 years of age, the juvenile court may:

(1) dismiss the juvenile court proceedings with prejudice; or

(2) continue with proceedings under this title as though no order of temporary hospitalization had been made.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973. Amended by Acts 1975, 64th Leg., p. 2157, ch. 693, §§ 20, 21, eff. Sept. 1, 1975.]

§ 55.03. Mentally Retarded Child

(a) If it appears to the juvenile court, on the suggestion of a party or on the court's own notice, that a child alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision may be mentally retarded, the court shall order a comprehensive diagnosis and evaluation of the child to be performed at a facility approved by the Texas Department of Mental Health and Mental Retardation. If the court finds that the results of such comprehensive diagnosis and evaluation indicate a significantly subaverage general intellectual function of 2.5 or more standard deviations below the age-group mean for the tests used existing concurrently with deficits in adaptive behavior of Levels I–IV, the court shall initiate proceedings to order commitment of the child to a facility for the care and treatment of mentally retarded persons.

(b) The Mentally Retarded Persons Act (Article 3871b, Vernon's Texas Civil Statutes) [1] governs proceedings for commitment of a child meeting the criteria set forth in Subsection (a) of this section except that:

(1) the juvenile court shall conduct the proceedings whether or not the juvenile court is also a county court; and

(2) on receipt of the court's order entering the findings set forth in Subsection (a) of this section, together with those findings set forth in the Mentally Retarded Persons Act as prerequisites for court commitments, the Texas Department of Mental Health and Mental Retardation or the appropriate community center shall thereupon admit the child to a residential care facility for the mentally retarded.

(c) If the juvenile court enters an order committing the child for care and treatment in a facility for mentally retarded persons, the child shall be cared for, treated, and released in conformity to the Mentally Retarded Persons Act except:

(1) the juvenile court that ordered commitment of the child shall be notified at least 10 days prior to discharge of the child; and

(2) appeal from juvenile court proceedings under this section shall be to the court of civil appeals as in other proceedings under this title.

(d) If the juvenile court orders commitment of a child to a facility for the care and treatment of mentally retarded persons, the proceedings under this title then pending in juvenile court shall be stayed.

(e) If the child is discharged from the facility for the care and treatment of mentally retarded persons before reaching 18 years of age, the juvenile court may:

(1) dismiss the juvenile court proceedings with prejudice; or

(2) continue with proceedings under this title as though no order of commitment had been made.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973. Amended by Acts 1975, 64th Leg., p. 2158, ch. 693, § 22, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1453, ch. 591, § 2, eff. Jan. 1, 1978.]

[1] Repealed; see, now, Civil Statutes, art. 5547–300.

§ 55.04. Mental Disease or Defect Excluding Fitness to Proceed

(a) No child who as a result of mental disease or defect lacks capacity to understand the proceedings in juvenile court or to assist in his own defense shall be subjected to discretionary transfer to criminal court, adjudication, disposition, or modification of disposition as long as such incapacity endures.

(b) If it appears to the juvenile court, on suggestion of a party or on the court's own notice, that a child alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision may be unfit to proceed, the court shall order appropriate medical and psychiatric inquiry to assist in determining whether the child is unfit to proceed because of mental disease or defect.

(c) The court or jury shall determine from the psychiatric and other evidence at a hearing separate from, but conducted in accordance with the requirements for, the adjudication hearing whether the child is fit or unfit to proceed.

(d) Unfitness to proceed must be proved by a preponderance of the evidence.

(e) If the court or jury determines that the child is fit to proceed, the juvenile court shall continue with proceedings under this title as though no question of fitness to proceed had been raised.

(f) If the court or jury determines that the child is unfit to proceed, the court or jury shall determine whether the child should be committed for a period of temporary hospitalization for observation and treatment in accordance with Section 55.02 of this code or committed to a facility for mentally retarded persons for care and treatment in accordance with Section 55.03 of this code.

(g) Proceedings to determine fitness to proceed may be joined with proceedings under Sections 55.02 and 55.03 of this code.

(h) The fact that the child is unfit to proceed does not preclude any legal objection to the juvenile court proceedings which is susceptible of fair determination prior to the adjudication hearing and without the personal participation of the child.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

§ 55.05. Mental Disease or Defect Excluding Responsibility

(a) A child is not responsible for delinquent conduct or conduct indicating a need for supervision if at the time of such conduct, as a result of mental disease or defect, he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

(b) If it appears to the juvenile court, on suggestion of a party or on the court's own notice, that a child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision may not be responsible as a result of mental disease or defect, the court shall order appropriate medical and psychiatric inquiry to assist in determining whether the child is or is not responsible.

(c) The issue of whether the child is not responsible for his conduct as a result of mental disease or defect shall be tried to the court or jury in the adjudication hearing.

(d) Mental disease or defect excluding responsibility must be proved by a preponderance of the evidence.

(e) In its findings or verdict the court or jury must state whether the child is not responsible for his conduct as a result of mental disease or defect.

(f) If the court or jury finds the child responsible for his conduct the proceedings shall continue as though no question of mental disease or defect excluding responsibility had been raised.

(g) If the court or jury finds that the child is not responsible for his conduct as a result of mental disease or defect, the court shall dismiss the proceedings with prejudice, and the court shall initiate proceedings under Section 55.02 or 55.03 of this code to determine whether the child should be committed for care and treatment as a mentally ill or mentally retarded child.

(h) A child declared not responsible for his conduct because of mental disease or defect shall not thereafter be subject to proceedings under this title with respect to such conduct, other than proceedings under Section 55.02 or 55.03 of this code.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

CHAPTER 56. APPEAL

Sec.
56.01. Right to Appeal.
56.02. Transcript on Appeal.

§ 56.01. Right to Appeal

(a) An appeal from an order of a juvenile court is to the Texas Court of Civil Appeals and the case may be carried to the Texas Supreme Court by writ of error or upon certificate, as in civil cases generally.

(b) The requirements governing an appeal are as in civil cases generally.

(c) An appeal may be taken by or on behalf of the child from:

(1) an order entered under Section 54.02 of this code respecting transfer of the child to criminal court for prosecution as an adult;

(2) an order entered under Section 54.03 of this code with regard to delinquent conduct or conduct indicating a need for supervision;

(3) an order entered under Section 54.04 of this code disposing of the case;

(4) an order entered under Section 54.05 of this code respecting modification of a previous juvenile court disposition; or

(5) an order entered under Chapter 55 of this code committing a child to a facility for the mentally ill or mentally retarded.

(d) Notice of appeal shall be given to the juvenile court as in civil cases generally.

(e) On entry of an order that is appealable under this section, the court shall instruct the attorney to advise the child and his parent, guardian, or guardian ad litem of the child's right to appeal, of the child's right to representation by counsel on appeal, and of the child's right to appointment of an attorney for appeal if an attorney cannot be obtained because of indigency. If the child and his parent, guardian, or guardian ad litem express a desire to appeal, the attorney shall file a notice of appeal with the juvenile court and inform the court whether or not he will handle the appeal.

(f) On entering an order that is appealable under this section, the juvenile court, if the child is not represented by an attorney, shall give notice to the child and his parent, guardian, or guardian ad litem of the child's right to appeal, of the child's right to representation by counsel on appeal, and of the child's right to appointment of an attorney for appeal if an attorney cannot be obtained because of indigency. Counsel shall be appointed under the standards provided in Section 51.10 of this code unless the right to appeal is waived in accordance with Section 51.09 of this code.

(g) An appeal does not suspend the order of the juvenile court, nor does it release the child from the

custody of that court or of the person, institution, or agency to whose care the child is committed, unless the juvenile court so orders. However, the appellate court may provide for a personal bond.

(h) If the order appealed from takes custody of the child from his parent, guardian, or custodian, the appeal has precedence over all other cases.

(i) The appellate court may affirm, reverse, or modify the judgment or order, including an order of disposition or modified disposition, from which appeal was taken. It may reverse or modify an order of disposition or modified order of disposition while affirming the juvenile court adjudication that the child engaged in delinquent conduct or conduct indicating a need for supervision.

(j) Neither the child nor his family shall be identified in an appellate opinion rendered in an appeal or habeas corpus proceedings related to juvenile court proceedings under this title. The appellate opinion shall be styled, "In the matter of .....," identifying the child by his initials only.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

§ 56.02. Transcript on Appeal

(a) The attorney representing a child on appeal who desires to have included in the record on appeal a transcription of notes of the reporter has the responsibility of obtaining and paying for the transcription and furnishing it to the clerk in duplicate in time for inclusion in the record.

(b) The juvenile court shall order the reporter to furnish a transcription without charge to the attorney if the court finds, after hearing or on an affidavit filed by the child's parent or other person responsible for support of the child that he is unable to pay or to give security therefor.

(c) On certificate of the court that this service has been rendered, payment therefor shall be made from the general funds of the county in which the proceedings appealed from occurred.

(d) The court reporter shall report any portion of the proceedings requested by either party or directed by the court and shall report the proceedings in question and answer form unless a narrative transcript is requested.

[Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973.]

TITLE 4. PROTECTION OF THE FAMILY

CHAPTER 71. PROTECTIVE ORDERS

Sec.

§ 71.01. Definitions

(a) Except as provided by Subsection (b) of this section, the definitions in Section 11.01 of this code apply to terms used in this chapter.

(b) In this chapter:

(1) "Court" means the district court, court of domestic relations, juvenile court having the jurisdiction of a district court, or other court expressly given jurisdiction of a suit under this subtitle or a county court.

(2) "Family violence" means the intentional use or threat of physical force by a member of a family or household against another member of the family or household, but does not include the reasonable discipline of a child by a person having that duty.

(3) "Family" includes individuals related by consanguinity or affinity, individuals who are former spouses of each other, and a foster child and foster parent, whether or not those individuals reside together.

(4) "Household" means a unit composed of persons living together in the same dwelling, whether or not they are related to each other.

(5) "Member of a household" includes a former member of a household who has filed an application or for whom protection is sought as provided by Subsection (c) of Section 71.04 of this code.

[Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979; Acts 1983, 68th Leg., p. 3857, ch. 607, § 1, eff. Aug. 29, 1983.]

§ 71.02. Commencement of Proceeding

A proceeding under this chapter is commenced by the filing of an application for a protective order with the clerk of the court.

[Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

§ 71.03. Venue

An application may be filed:

(1) in the county where the applicant resides; or

(2) in the county where an individual alleged to have committed family violence resides.

[Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

§ 71.04. Application for Protective Order

(a) An application under this chapter is entitled "An application for a protective order."

(b) An application may be filed by:

(1) an adult member of a family or household for the protection of the applicant or for any other member of the family or household;

(2) any adult for the protection of a child member of a family or household; or

(3) any prosecuting attorney who serves the county in which the application is to be filed and who represents the state in a district or statutory county court for the protection of any person alleged to be a victim of family violence.

(d) The fee for filing an application is $16 and is to be paid to the clerk of the court in which the application is filed. If the applicant files a sworn statement that the applicant is unable to pay the filing fee and other court costs, the court, on a finding that the statement is true, shall waive the fee and costs that may be due or become due from the applicant. A hearing on the issue of the waiver of the fee and cost, if requested by a party or if required by the court, must be held within three days of the request by a party or of the court's requirement.

(c) A person who was a member of a household at the time the alleged family violence was committed is not barred from filing an application or from protection under this chapter even if the person no longer resides in the same household with the person who is alleged to have committed the family violence.

(e) If the application is filed by a prosecuting attorney under Subdivision (3) of Subsection (b) of this section, the court may assess a reasonable attorney's fee as compensation for the services of the prosecuting attorney. The attorney's fee may be assessed against the party represented by the attorney or against any other party who is found to have committed family violence. In setting the amount of the fee, the court shall consider the income and ability to pay of the person against whom the fee is assessed. The amount of fees collected under this section shall be paid to the credit of the county fund from which the salaries of employees of the prosecuting attorney are paid or supplemented.

[Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979; Acts 1983, 68th Leg., p. 3857, ch. 607, § 2, eff. Aug. 29, 1983.]

§ 71.05. Contents of Application

(a) An application must state:

(1) the name and county of residence of each applicant and the name, address, and county of residence of each individual alleged to have committed family violence;

(2) the facts and circumstances concerning the alleged family violence;

(3) the relationships between the applicants and the individuals alleged to have committed family violence; and

(4) a request for one or more protective orders.

(b) If an application requests a protective order for a spouse and alleges that the other spouse has committed family violence, the application must state that no suit for the dissolution of the marriage of the spouses is pending.

(c) If an applicant is a former spouse of an individual alleged to have committed family violence:

(1) a copy of the decree dissolving the marriage must be attached to the application; or

(2) the application must state that the decree is unavailable to the applicant and that a copy of the decree will be filed with the court before the hearing on the application.

(d) If an application requests a protective order for a child who is subject to the continuing jurisdiction of a court under Subtitle A, Title 2, of this code[1] or alleges that a child who is subject to the continuing jurisdiction of a court under Subtitle A, Title 2, of this code has committed family violence:

(1) a copy of the court orders affecting the conservatorship, possession, and support of or the access to the child must be filed with the application; or

(2) the application must state that the orders affecting the child are unavailable to the applicant and that a copy of the orders will be filed with the court before the hearing on the application.

(e) If the application requests the issuance of a temporary ex parte order under Section 71.15 of this code, the application must:

(1) contain a detailed description of the facts and circumstances concerning the alleged family violence and the need for immediate protective orders; and

(2) be signed by each applicant under an oath that the facts and circumstances contained in the application are true to the best knowledge and belief of each applicant.

[Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979; Acts 1983, 68th Leg., p. 3858, ch. 607, § 3, eff. Aug. 29, 1983.]

[1] Section 11.01 et seq.

§ 71.06. Dismissal of Application

If a suit for the dissolution of marriage has been filed before the date on which an application for a

protective order is filed and that suit is pending on the date that the application is filed, no application or portion of an application involving the relationship between the spouses or their respective rights, duties, or powers may be considered, and the application or portion of the application relating to those parties shall be dismissed.

[Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979; Acts 1983, 68th Leg., p. 3859, ch. 607, § 4, eff. Aug. 29, 1983.]

§ 71.07. Citation

(a) Each individual, other than an applicant, who is alleged to have committed family violence is entitled to service of citation on the filing of an application.

(b) Service of citation is not required before the issuance of a temporary ex parte order under Section 71.15 of this code.

[Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

§ 71.08. Answer

An individual served with citation may but is not required to file a written answer to the application. The answer may be filed at any time before the hearing.

[Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

§ 71.09. Hearing

(a) Unless a later date is requested by the applicant, the court, on the filing of an application, shall set a date and time for the hearing on the application. The date must be not later than 20 days after the date the application is filed.

(b) If a person entitled to service of citation is not served at least 48 hours before the time set for the hearing, the hearing must be rescheduled unless the person entitled to service is present at the hearing and waives notice of the hearing.

(c) If a hearing set under Subsection (a) of this section is not held because of the failure of a party to receive service of citation, the applicant may request the court to reschedule the hearing. The date for a rescheduled hearing under this subsection must be not later than 20 days after the date on which the request is made.

(d) Except as provided by Subsections (a), (b), and (c) of this section, the court may schedule hearings under this chapter as in other civil cases generally.

[Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

§ 71.10. Findings

(a) At the close of a hearing on an application, the court shall find whether or not family violence has occurred and whether or not family violence is likely to occur in the foreseeable future.

(b) If the court finds that family violence has occurred and that family violence is likely to occur in the foreseeable future, the court may make any protective order authorized by this chapter that is in the best interest of the family or household or a member of the family or household.

(c) A protective order may apply only to an individual, including an applicant, who is a party to the proceeding and who:

(1) is found to have committed family violence; or

(2) has agreed to the order under Section 71.12 of this code.

[Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

§ 71.11. Protective Order

(a) In a protective order the court may:

(1) prohibit a party from:

(A) removing a child member of the family or household from the possession of a person named in the court order or from the jurisdiction of the court; or

(B) transferring, encumbering, or otherwise disposing of property mutually owned or leased by the parties, except when in the ordinary course of business;

(2) grant exclusive possession of a residence to a party and, if appropriate, direct one or more other parties to vacate the residence if:

(A) the residence is jointly owned or leased by the party receiving exclusive possession and by some other party denied possession;

(B) the residence is owned or leased by the party retaining possession; or

(C) the residence is owned or leased by the party denied possession but only if that party has an obligation to support the party granted possession of the residence or a child of the party granted possession;

(3) provide for possession of and access to a child of a party;

(4) require the payment of support for a party or for a child of a party if the person required to make the payment has an obligation to support the other party or the child;

(5) require one or more parties to counsel with a social worker, family service agency, physician, psychologist, or any other person qualified to provide psychological or social guidance;

(6) award to a party use and possession of specified property that is community property or jointly owned or leased; or

(7) prohibit a party from doing specified acts or require a party to do specified acts necessary or

appropriate to prevent or reduce the likelihood of family violence.

(b) In a protective order the court may prohibit a party from:

(1) committing family violence;

(2) directly communicating with a member of the family or household in a threatening or harassing manner;

(3) going to or near the residence or place of employment or business of a member of the family or household. The court shall specifically describe the prohibited locations and the minimum distances therefrom, if any, that the party must maintain.

(c) A protective order or an agreement approved by the court under this chapter does not affect the title to real property.

(d) A protective order made under this section that conflicts with any other court order made under Subtitle A, Title 2, of this code [1] is to the extent of the conflict invalid and unenforceable.

[Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 4047, ch. 631, § 2, eff. Sept. 1, 1983.]

[1] Section 11.01 et seq.

§ 71.12. Agreed Orders

(a) To facilitate the settlement of a proceeding under this chapter, two or more parties to the proceeding may agree in writing, subject to the approval of the court, to do or refrain from doing any act that the court could order under Section 71.11 of this code. If all or part of an agreement is approved by the court, the part of the agreement approved shall be attached to the protective order and become a part of the order of the court.

(b) An agreement that is made a part of the court's order is enforceable as a court order and is not enforceable as a contract. The agreement expires when the court order expires.

[Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

§ 71.13. Duration of Protective Orders

(a) An order made under Section 71.11 of this code is effective for the period specified in the order, not to exceed one year.

(b) An order of a court having jurisdiction of a suit for divorce or annulment prevails, to the extent of conflict only, over a conflicting portion of an order made under this title and relating to the parties to the suit for divorce or annulment.

[Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979; Acts 1983, 68th Leg., p. 3859, ch. 607, § 5, eff. Aug. 29, 1983.]

§ 71.14. Modification of Orders

(a) On the motion of any party, the court, after notice to the other parties and a hearing, may modify a prior order to exclude any item included in the prior order or to include any item that could have been included in the prior order.

(b) An order may not be modified to extend the period of its validity beyond one year after the date the original order was made.

[Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

§ 71.15. Temporary Orders

(a) If the court finds from the information contained in an application that there is a clear and present danger of family violence, the court, without further notice to any other member of the family or household and without a hearing, may enter a temporary ex parte order for the protection of the applicant or any other member of the family or household. The court may direct any member of the family or household who is alleged to have committed family violence to do or refrain from doing specified acts.

(b) A temporary ex parte order is valid for the period specified in the order, not to exceed 20 days.

(c) On the request of an applicant or on the court's own initiative, a temporary ex parte order may be extended for an additional 20 days and may be extended thereafter for additional 20-day periods.

(d) The court in its discretion may dispense with the necessity of a bond in connection with a temporary ex parte order.

(e) Any member of the family or household may at any time file a motion to vacate a temporary ex parte order, and on the filing of the motion the court shall set a date for a hearing on the motion as soon as possible.

(f) During the period of its validity, a temporary ex parte order prevails over any other court order made under Subtitle A, Title 2, of this code,[1] except that on a motion to vacate the temporary ex parte order, the court shall vacate those portions of the temporary order shown to be in conflict with any other court order made under Subtitle A, Title 2, of this code.

[Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

[1] Section 11.01 et seq.

§ 71.16. Warning on Protective Order

(a) Each protective order issued under this chapter, including a temporary ex parte order, shall have the following statement printed in bold-faced type or in capital letters:

"A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR CONTEMPT OF COURT BY A FINE OF AS MUCH AS $500 OR BY CONFINEMENT IN JAIL FOR AS LONG AS SIX MONTHS, OR BOTH."

(b) Each protective order issued under this chapter, except a temporary ex parte order, shall have the following statement printed in bold-faced type or in capital letters:

"A VIOLATION OF THIS ORDER BY COMMISSION OF FAMILY VIOLENCE MAY BE A CRIMINAL OFFENSE PUNISHABLE BY A FINE OF AS MUCH AS $2,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH."

[Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

§ 71.17. Copies of Orders

(a) A protective order made under this chapter shall be served on the person to whom the order applies in open court at the close of the hearing or in the same manner as a writ of injunction.

(b) The clerk of the court issuing a protective order under this chapter shall send a copy of the order to the chief of police of the city where the member of the family or household protected by the order resides, if the person resides in a city, or to the sheriff of the county where the person resides, if the person does not reside in a city.

[Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

§ 71.18. Duties of Law Enforcement Agencies

In order to insure that officers responding to calls are aware of the existence and terms of protective orders issued under this chapter, each municipal police department and sheriff shall establish procedures within the department or office to provide adequate information or access to information for law enforcement officers of the names of persons protected by order issued under this chapter and of persons to whom protective orders are directed.

[Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

§ 71.19. Relief Cumulative

Except as provided by this chapter, the relief and remedies provided by this chapter are cumulative of other relief and remedies provided by law.

[Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

CHAPTER 72. CONTRIBUTING TO DELINQUENCY OR DEPENDENCY OF A CHILD

Sec.
72.001. Definitions.
72.002. Offense.
72.003. Excluded Defense.
72.004. Conflicting Offenses.

§ 72.001. Definitions

In this chapter:

(1) "Child" means an individual under 17 years of age.

(2) "Delinquency" includes doing any act that tends to debase or injure the morals, health, or welfare of a child; drinking intoxicating liquor; using narcotics; going into or remaining in any bawdy house, assignation house, disorderly house, or road house, hotel, public dance hall where prostitutes, gamblers, or thieves are permitted to enter and ply their trade; going into a place where intoxicating liquors or narcotics are kept, drunk, used, or sold; or associating with thieves and immoral persons, causing a child to leave home or to leave the custody of his parents, guardian, or persons standing in lieu of his parent or guardian without first receiving their consent or against their will; and doing any other act that would constitute delinquent conduct or cause him to become a delinquent by committing the act.

[Acts 1983, 68th Leg., p. 999, ch. 235, Art. 3, § 1(a), eff. Sept. 1, 1983.]

§ 72.002. Offense

(a) A person commits an offense if, in any case in which a child is caused to become a delinquent or a dependent and neglected child, the person encourages by any act, causes, acts in conjunction with, or contributes to the delinquency, dependency, or neglect of the child.

(b) An offense under this section is punishable by a fine of not more than $500, by confinement in jail for not more than one year, or by both.

[Acts 1983, 68th Leg., p. 999, ch. 235, Art. 3, § 1(a), eff. Sept. 1, 1983.]

§ 72.003. Excluded Defense

The fact that a child has not been declared a delinquent child or a dependent or neglected child is not a defense to the offense defined by Section 72.002 of this code.

[Acts 1983, 68th Leg., p. 999, ch. 235, Art. 3, § 1(a), eff. Sept. 1, 1983.]

§ 72.004. Conflicting Offenses

To the extent of any conflict, the offenses defined by the Penal Code or other law enacted subsequent to Chapter 488, Acts of the 51st Legislature, Regular Session, 1949, prevail over the offense defined by this chapter.

[Acts 1983, 68th Leg., p. 999, ch. 235, Art. 3, § 1(a), eff. Sept. 1, 1983.]

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