

Chapter 8. Key Figures in the Texas Juvenile Justice Proceedings

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Introduction

Many people play a role in the Juvenile Criminal Justice System Cox, Conrad, Allen and Hanser (2008) describe the attorneys, judges, probation officers and their working relationship. All have an individual and important role for a parents' child when they find themselves in the court system. Each person brings an individual role to the table which affects the outcome of a child's case. Each personality involves their own likes and dislikes, and interprets the law according to their agenda while remaining within the limits of the law at the same time. Beginning with the juvenile him/herself or also called the respondent in the juvenile system, to the family, referee judges, prosecutors, defense attorneys, probation officers, investigators, experts, and the court coordinator, all have input in this juvenile's life. This chapter defines the critical persons involved in the juvenile justice process in Texas and also presents an in-depth look at the Harris County Juvenile Justice system as it is the largest juvenile justice system in the state of Texas.

The Magistrate

An important person in Texas Juvenile Justice is the magistrate because statute requires that warnings, such as those known as Miranda Warnings and all confessions be given by and to this person. The definition of a magistrate in Texas is very broad and encompasses many people including The justices of the Supreme Court, the judges of the Court of Criminal Appeals, the justices of the Courts of Appeals, the judges of the District Court, some magistrates appointed by District and County Courts, some criminal law hearing officers (Harris County), county judges, judges of the county courts at law, judges of the county criminal courts, the judges of statutory probate courts, the masters appointed by the judges of the statutory probate courts, justices of the peace, mayors and recorders and judges of the municipal courts of incorporated cities or town (Garza, 2007). It is important to note not all magistrates are attorneys. Nevertheless attorneys play a significant role in the juvenile justice system as described below.

Attorneys in the Juvenile Justice System

Chapter seven provided an explanation of the role of the police in the juvenile justice system. The police officer brings in the juvenile and most follow specific procedures as reference to the handling and processing of the juvenile. These procedures include the filing of a petition and placing a juvenile into the detention center. Once in the detention center the court appointed defense attorney shall have access to all written matter to be considered by the court in making the detention decision (Texas Statutes Family Code, Ch. 54; § 54.01(c)). Just as important in these detention proceedings, no statement made by the child at this hearing shall be admissible against the child at any other hearing (Texas Statutes Family Code, Ch. 54; § 54.01(g)).

Among the written materials available for review by the Court, prosecutor and the defense attorney is the confidential Predisposition Report investigated and written by the Juvenile Probation Department. "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." (Texas Statutes Family Code, Ch. 54; § 54.02 (d)). This report provides a snap shot picture of the juvenile's life up to the day of his arrest; it summarizes the facts surrounding the offense;

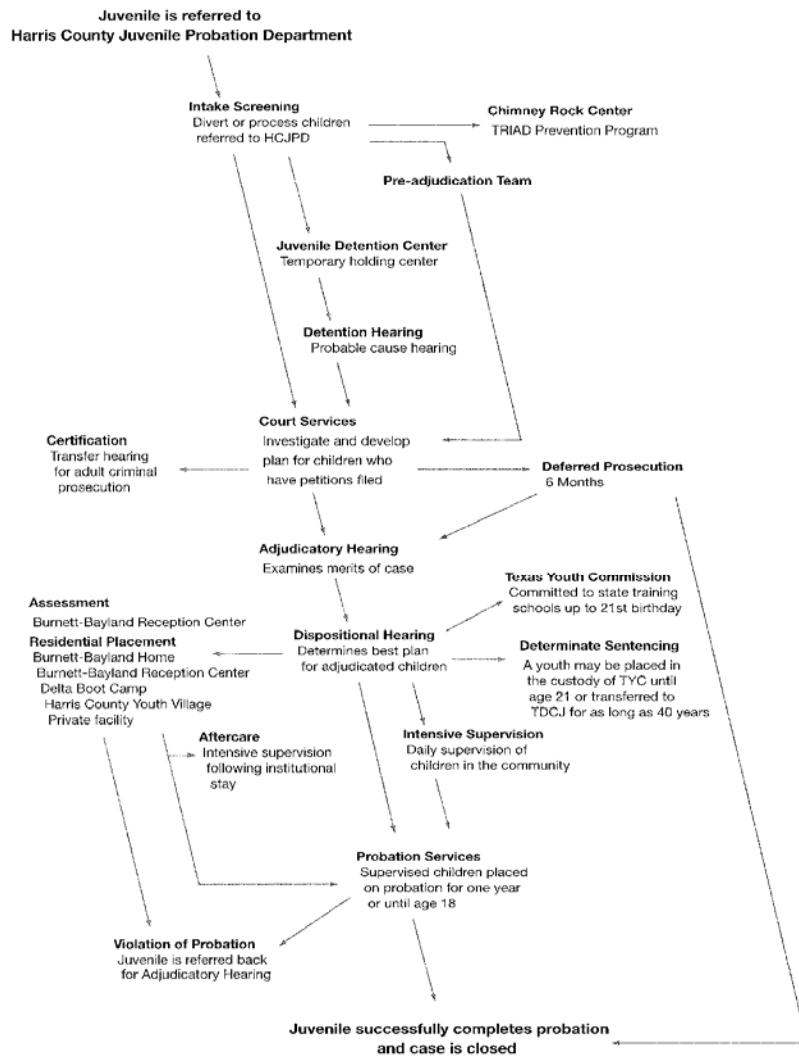
other actors involved; prior arrest history or referrals to the probation department; status of any active probation term; family history; family income and number of people supported by the income; school information; grades and disciplinary actions; physical and mental health; and finally, drug and gang concerns. This confidential report concludes by informing the Court of all the programs in the Juvenile System, including the Texas Youth Commission that the juvenile is eligible to be placed in as a disposition for sentence.

Moving Through the Harris County Juvenile Justice System

Figure 1.1 provides a case flow chart of a juvenile case making its way in the Harris County Juvenile Justice System. As discussed previously it involves a referral (usually involving a police officer as presented in Chapter 7). Intake screening and a petition is filed in order to determine the need for further action, deferment or if a hearing should take place to certify the juvenile as an adult. Afterward an adjudication hearing is held to determine the facts related to the matter. If the case proceeds down the juvenile justice road a dispositional hearing is held to determine what services in the county and state are best for the juvenile. These options include numerous residential placements in the county, Texas Youth Commission, determinate sentencing, probation or intensive supervision. In some cases aftercare services are provided and finally the case is closed once the juvenile reaches her/his 18th birthday unless the juvenile is in TYC in which custody can be until the 19th birthday (it is important to note TYC has custody of youth only until the 19th birthday not the 21st as indicated on the 2006 case flow chart in Figure 1.1). If a determinate sentence was the disposition of the case the juvenile will be transferred to the Texas Department of Corrections on her/his 19th birthday and remains under their custody for the remainder of the sentence, which could be as long as 40 years.

Because the stakes are very high for juvenile in the Texas Juvenile Justice System the right to counsel is important. Texas in follow *In Re Gault* 1967 provides counsel to all persons regardless of their inability to pay for services. Determining which juveniles are provided free legal services is explained below.

Case Flow Chart



Source: Harris County Juvenile Probation Department, 2006 Annual Report – Building for the Future. 2006. 1200 Congress St., Houston, TX 77002

Determining Indigence

If a child is deemed indigent by the referee judge during his initial appearance in the detention hearing, then the same attorney appointed for the detention hearing will represent the child through out all subsequent hearings until his case is disposed or the family retains an attorney (Texas Statutes Family Code, Ch. 51; § 51.101). However, some parents believe the Juvenile Court will allow themselves to represent their child; this is incorrect, the Family Code only allows representation by an attorney.

The following table is used by some Texas counties to determine indigence: 2007 Department of Health and Human Services (HHS) Poverty Guidelines

Persons in Family or Household	48 Contiguous States and D.C.	Alaska	Hawaii
1	\$10,210	\$12,770	\$11,750
2	13,690	17,120	15,750
3	17,170	21,470	19,750
4	20,650	25,820	23,750
5	24,130	30,170	27,750
6	27,610	34,520	31,750
7	31,090	38,870	35,750
8	34,570	43,220	39,750
For each additional person, add	3,480	4,350	4,000

SOURCE: *Federal Register*, Vol. 72, No. 15, January 24, 2007, pp. 3147–3148

Retrieved on July 11, 2007 from <http://aspe.hhs.gov/poverty/07poverty.shtml>

Acquiring indigent defense.

The system used to appoint qualified defense attorneys is addressed in the Texas Statutes Family Code under Chapter 51 § 51.102, APPOINTMENT OF COUNSEL PLAN. The Juvenile Board in each county determines the qualifications necessary for an attorney to be included on an appointment list to represent children; establishes the procedures used for attorneys to be placed on the appointment list; describes the procedure used to remove attorneys from the list; and finally, explains the procedure used in randomly appointing attorneys from the list to individual cases.

Harris County Juvenile District Judges in Houston, Texas have created a list of qualifications for a defense attorney to meet prior to being placed on the coveted eligible court appointed attorney list. Each attorney must have a minimum number of years experience as a practicing attorney to represent a

“C” status offense, clear a background check and attend twelve hours per year of Continuing Legal Education specifically in juvenile law.

The Harris County Juvenile Board utilizes a rating system of A, B and C, with “A” representing the most serious of juvenile offenses, Capital Murder. Each attorney who has been approved to be on the court appointed list is also rated based on his qualifications to handle “A,” “B,” or “C” cases.

These attorneys utilizing the World Wide Web, sign on to the Harris County Juvenile District Courts’ web site’s calendar section. All pre-approved attorneys who are interested in receiving a court appointment in one of the three Juvenile District Courts of Harris County, the 313th DC, 314th DC and the 315th DC, sign up for the days or weeks they are available to receive court appointments.

It is the duty of the court coordinator to match the level of offense, A, B or C with the random list of attorneys who meet the criteria to represent a juvenile charged with an A, B, or C offense.

Appointed Attorneys versus Retained Attorneys

There can be advantages of a juvenile being represented by a court appointed attorney. For example, Harris County Judges require all attorneys who are appointed to practice in their courtrooms to have a minimum of 12 hours of continuing legal education in juvenile law; therefore, theoretically, these practicing attorneys should be the most familiar with the changes in Juvenile Law. Moreover, these attorneys on the court appointment list are well-known by court personnel in the juvenile courtrooms and practicing juvenile law makes up the majority of their practice. Furthermore, the best part of practicing Harris County defense attorneys were prior assistant district attorneys who were assigned to these Judges in the Juvenile Courts.

These attorneys who sign up on the Juvenile Courts’ calendars to work are individual attorneys who have their own practice or firm. Harris County does not employ a second bureaucracy, a Public Defenders Office, which is the District Attorneys office legal opposition. In the December 2002 issue of the Texas Bar Journal, it sites “El Paso County — one of only five Texas counties” with a Public Defender’s Office “(the others are Colorado, Dallas, Webb, and Wichita).” Equal Justice Center web site at http://www.equaljusticecenter.org/new_page_37.htm.

Retained attorneys usually come from practices that practice all types of law, i.e., civil, criminal, torts, federal, probate and other areas. These attorneys generally do not have the rapport needed to gain the cooperation and respect of the District Attorney’s office. Some of these retained attorneys are not privy to the unspoken “court family” attitude, i.e., receiving a desired reset court date from the court coordinator.

Another advantage of having a regular court appointed attorney is the majority of the motions filed being granted by the Judge. Attorneys will utilize an investigator for witness interviews and the “leg work” needed for these cases. This is an example of the financial control of utilizing tax payers’ moneys by the Judges to grant court appointed investigators for out of court hours.

In reviewing an “ATTORNEY FEES EXPENSE CLAIM – JUVENILE DISTRICT COURTS – COURT APPEARANCE” it is evident that the Harris County Judges have placed a maximum dollar amount for services rendered by a court appointed attorney, an investigator or by an expert witness. When reviewing these daily rates earned by a court appointed attorney, what immediately comes to mind is the comparison of these daily rates being the equivalent to the hourly rate a retained attorney would charge for probably achieving the same disposition. Also, it is economically more feasible for a \$50 to \$65 per hour investigator to conduct the interviews than to pay the appointed attorney for his out of court hours. Keeping in mind, a court-appointed private investigator may only earn the maximum payment of \$750 for the life of a juvenile case.

In reviewing the Attorney Fees Expense Claim – Juvenile District Courts – Court Appearance voucher, it is noted the more serious the offense the juvenile has committed the higher the daily rate is for the appointed attorney. With that in mind, the more serious an offense is committed by a juvenile, a defense attorney would likely have the juvenile “psych’d.” This means the juvenile will need a

psychological or psychiatric evaluation. Most experts in these fields usually charge from \$200 an hour to \$400 an hour usually depending upon how many degrees and certifications an expert holds. Reviewing the Attorney Fees Expense Claim – Juvenile District Courts – Court Appearance voucher, it is noted the maximum pay out for an expert is \$750, the same as the fact finding Private Investigator.

County Auditor's Form 40-3 Harris County, Texas (REV. 06/03)		INSTRUCTIONS			
ATTORNEY FEES EXPENSE CLAIM JUVENILE DISTRICT COURTS-COURT APPEARANCE UNDER TEXAS FAMILY CODE SECTION 51.101		Show only one respondent per claim. Before payment can be authorized, each item must be completed legibly in ink. For investigations, paid bills must be submitted by the attorney for expenses claimed. Forward completed claim to the Presiding Judge for approval.			
Court No.	Respondent's Name	Case Number(s)		Charge(s)	
		Number of Court Days/Hours	RATE	TOTAL (presumptive max.)	AMOUNT (Judge Completes)
ATTORNEY FOR THE DAY AT DETENTION HEARINGS			\$300/day	\$300/day	
INDIVIDUAL CASE APPOINTMENT					
NON-TRIAL	First Degree		\$250/day	\$1,250	
	Second Degree		\$200/day	\$1,000	
	Third Degree, SJF		\$150/day	\$750	
	Misdemeanor & VOP		\$125/day	\$625	
	Resets & Detention Hearings		\$75/day		
TRIAL	First Degree		\$500/day		
	Second Degree		\$400/day		
	Third Degree, SJF, MISD		\$300/day		
NON-DEATH CAPITAL	Non-Trial Appearance		\$400/day	\$3,200	
	Trial/Hearing with Testimony		\$800/day		
	Out-of-Court Hours*		\$100/hour	\$5,000	
PRE-TRIAL HEARING w/ TESTIMONY			\$350/day		
NON-CAPITAL APPEALS			\$75/hour	\$2,250	
OUT OF COURT HOURS*	First Degree		\$100/hour	\$2,000	
	Second Degree		\$75/hour	\$750	
	Third Degree, SJF, MISD		\$50/hour	\$500	
INVESTIGATION EXPERT TESTIMONY	Prior written court approval required. Itemized bill required. Expert expenses paid per County policy.			\$750/case	
				\$750/case	
OTHER-Prior Approval of Fee Schedule Committee Required.					
*Must detail on Out-of-Court voucher form.				TOTAL	
List date(s) of all Court Appearances. Attach any Out-of-Court voucher form.					
ORDER DETERMINING RIGHT TO APPOINTMENT OF COUNSEL					
On this date, the Respondent's request for the appointment of counsel was heard in open Court and evidence presented concerning the Respondent's financial resources.					
APPOINTMENT WITH REIMBURSEMENT: The Court finds the Respondent is entitled to the appointment of counsel because					
<input type="checkbox"/> It is in the interest of justice. The Court further finds the Respondent presently has financial resources to pay all or part of the cost of legal services and related expenses.					
IT IS ORDERED that Respondent is appointed counsel and shall contribute to the cost of legal services and related expenses as may be ordered by the Court.					
INDIGENCY WITHOUT REIMBURSEMENT: The Court finds the Respondent is entitled to the appointment of counsel because					
<input type="checkbox"/> Respondent is indigent <input type="checkbox"/> it is in the interest of justice. The Court further finds the Respondent presently has insufficient financial resources to offset the cost of legal services and related expenses.					
IT IS ORDERED that Respondent is appointed counsel in this matter.					
The Court appoints the attorney named below to represent the Respondent until charges are dismissed, the Respondent is found not to have engaged in delinquent conduct or not be a child in need of supervision, appeals are exhausted, or the attorney is relieved of his/her duties by the Court or replaced by other counsel.					
PERSONAL INFORMATION					
Social Security Number		Telephone Number ()		Bar Card Number	
Mailing Address (Number, Street, Suite, City, State, Zip Code)					
CERTIFICATION					
I, _____, Attorney at Law, swear or affirm to the Harris County Auditor that he/she may rely upon the information contained above and make payment according to the fee schedule adopted by the Harris County Juvenile Board. I further swear or affirm that I have not received nor will receive any money or anything else of value for representing the accused, except as otherwise disclosed to the Court in writing.					
SWORN TO AND SUBSCRIBED BEFORE ME ON THIS THE ____ DAY OF _____ A.D. 20 ____					
Approved _____		_____ Judge, Presiding		_____ Attorney at Law (Signature)	
_____ District Clerk Deputy (Signature)				_____ Attorney Name (print legibly)	

COURT

Prosecuting Attorneys

A “pressure” that prosecutors are always conscious of that defense attorneys are not burdened with is the politics that stand behind every decision and disposition of every case made by the lawyers employed by the elected official of the District Attorney’s office. These prosecutors are making a career for themselves in this public arena and every case tried is either in the “win” or “lose” column. These statistics are a consideration, among other factors, to assist a supervisor in deciding which prosecutor gets promoted. Prosecutors really do have “something” to prove (C. Barnett, J. Alston and M. Alford, personal communication, July 30, 2007).

A newly appointed (just passed the bar) lawyer right out of law school could make is \$51,456 (Harris County District Attorney’s Office General Hiring Information.PDF. (n.d.) Retrieved on July 14, 2007 from <http://app.dao.hctx.net/careers/Applications/HiringInformation.pdf>). This salary also includes the new lawyer’s hospitalization, dental and eye care, life and disability insurance.

This compares to a court-appointed defense attorney who earns the reputation from the Juvenile District Judges and their staff as a person who “moves cases” has the potential of earning over \$100,000 plus per year (S. Newhouse, personal communication, July 19, 2007). As explained earlier in the chapter, if a defense attorney has the experience behind him/her to be appointed to the “A” status cases, i.e., the Capital Murder or Death Penalty cases; he/she will be over the allotted amount allowed by the Judges. More importantly, the Judges recognize the need to appoint experienced defense lawyers to do a thorough job for a quality defense.

Juvenile Court Judges

In Texas, Juvenile Judges are elected by the local county voters for four year terms. Before a judge takes the bench, he/she must attend a five day seminar regarding juvenile law, the media, stresses, the children, the volume of cases, how to anticipate problems, and more. In addition, these judges also must have 12 hours in continuing learning education (CLE) annually in Family Violence to help them deal with CPS (Child Protective Services) cases.

Judges who keep in mind the philosophy of the juvenile system make all the final decisions on how a juvenile’s case will be disposed. The prosecutor and the defense attorney may plea bargain to an agreed disposition; and the majority of cases are disposed of through a plea bargain agreement, but more importantly, however; if the trial judge of the juvenile court is not satisfied with the end result, then the parties will have to agree to another disposition. The lawyers will need to keep in mind that the compromise to dispose of a juvenile’s case must satisfy the Judge, the victims (if any) and juvenile’s family, as well as, what is best for the juvenile.

Juvenile judges know the source of all their decisions comes from the Texas Family Code. Judges base their decisions on how to dispose of a case by what the law allows; no cookie cutter sentences. The Courts’ principle for sentencing practices reflects that each individual case is considered by its own merits and facts.

Also, where as state district judges strictly hear criminal cases; a juvenile judge’s docket of cases is divided by two different types of law: the delinquency’s of juveniles and Child Protective Services (CPS) cases. In order to manage their dockets, judges assign certain days of the week for one docket versus the other docket. For example, every Monday, Wednesday and Friday may only have the juvenile delinquency cases, leaving Tuesday and Thursday to hear the CPS cases.

Juvenile District Judges hear cases all day. During their delinquency docket, the attorneys may have the majority of their case worked out through plea bargaining; however, any day left over is reserved for motion hearings or trials. Judges cannot predict how many delinquent cases will be placed on the docket due to some respondents having more than one charge filed against them. In other words, even though the Judge may have 60 respondent’s names listed on his docket any particular morning, some

juvenile's may have numerous charges associated with them. For example, as a result of one incident, a police officer may charge a juvenile with Evading Arrest, Burglary, Carrying a Weapon and Possession of Marijuana.

During the day of a CPS docket, most cases are decided by having a hearing and the Judge making the decision based on the evidence heard. These hearings have family members, CPS workers and attorneys who represent the child(ren), parents, and other interested parties. These hearings take a long period of time due to everyone needing to be heard before the Judge makes his ruling.

Juvenile Probation Officers

In order to work as a Juvenile Probation Officer, an applicant must meet the following qualifications:

Probation Officer Minimum Requirements for Employment and Certification:

- Good moral character
- Bachelor's degree from a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board (applies only to juvenile probation officers hired after September 1, 1981).
- One-year related work experience (an Employment Exemption Request may be requested), or
- One-year of graduate study in fields of study as defined in either Human Resource Code 141.061, Chapter 341 of the Texas Administrative Code or set forth in the CGM.
- Have completed 40 hours including the mandatory topics within 18 months of the submission date of the application for certification.
- Actively employed as a Juvenile Probation Officer
- 21 years of age or older
- No disqualifying criminal history
- Not required to register as a sex offender

Source: Texas Juvenile Probation Commission (n.d).
http://www.tjpc.state.tx.us/about_us/divisions/training/Default.htm.

The hiring county, through state websites is able to verify if any applicant is registered with the State of Texas as a sex offender, (the last qualification listed) versus if an applicant has "Good moral character," the first qualification listed. Additionally, according to the Texas Juvenile Probation Commission web site, an officer must maintain the certification status every two years by achieving the following:

- Recertification required every 24 months from date of last certification.
- No disqualifying criminal history
- Not required to register as a sex offender
- 80-hours of continuing education in course work topics that are related to job responsibilities, the field of juvenile justice, or fields of study approved by the Commission.

Juvenile Probation Officers, (JPO), could supervise juveniles on a diversity of caseloads, such as: Sex Offenders, Intensive Supervision, Mental Health, and Gang Supervision. Also in Harris County, the JPO's predict whose caseload or program will increase by which Juvenile District Judge a juvenile's case is in. One judge prefers to keep the number of juveniles down in the detention center; therefore,

alternative solutions are utilized. Another judge puts the emphasis on educating youths; therefore, may order the Educational Workshops, the Peer Pressure Workshop or the Vocational Education Program. The last District Juvenile Judge, who is new and younger than the others, is described as more lenient; therefore, fewer youths are committed to the Texas Youth Commission (T. McGee, personal communication, July 19, 2007).

The old phrase, “kids these days” has taken a new definition from ten years ago to present according to a 28 year experienced supervising Juvenile Probation Officer in Harris County. She believes in 2007 versus 1997, “Kids these days have no fear of consequences. They are more advanced and they live for now. Society has relaxed on family values. Any and everything goes: video games, cell phones, television, cable and technology in general. Kids have nothing to look forward to because they get everything now” (T. McGee, personal communication, July 19, 2007).

Another observation made by a 30 year veteran and supervisor with the Juvenile Probation Department was the finding of more girls is being charged with offenses that ten years ago were mainly associated with boys (D. Camp, personal communication, July 23, 2007). He continued by stating that the Harris County Burnett- Bayland Home added a female residential program for 13 girls to reside in cottages segregated from the boys attending the program.

According to this experienced supervisor the average caseload for a Juvenile Probation Officer to supervise is about 60 kids. Each regular supervised caseload consists of two types of cases sent from court: the Adjudicated and the Deferred Prosecution. The latter category of cases, a juvenile may be placed on this type of probation for no more than six months (Texas Statutes Family Code, 79th Legislature, 2006, Chapter 53, § 53.03 (a)).

Juvenile Probation Officers may feel the many hats they wear while supervising a juvenile caseload; however, more importantly, they are aware of the Juvenile District Courts’ policies that they serve under and are to enforce. A JPO might practice a law enforcement type attitude or be more of a juvenile advocate or lastly, practice the philosophy of a social worker. Regardless of their own personal beliefs or philosophy of the Juvenile Probation System, according to the Texas Juvenile Probation Commission, juvenile officers receive 40 hours of training in this field, such as: Probation Officer basic training, Intensive Supervision Probation, the Texas Family Code, Management and Supervision, Victim Rights and Assistance, Sex Offenders, Gang Awareness, Legislative Updates, Federal Programs, Juvenile Justice Alternative Education Program, School Safety, Violence Prevention and Conflict Resolution to name a few training hours (Texas Juvenile Probation Commission, 2007).

Additionally with all the help through programs, JPOs, counselors, educators, etc, if a juvenile violates a condition of his probation, the case is reviewed intently by several juvenile personnel’s before the decision is made to send a violation notice to the District Court. The supervising officer could make a recommendation of amending the conditions of probation or revocation of the probation.

Summary

The assembly line justice in the Texas Juvenile Justice System gives light to the many different people who come in contact with the alleged and adjudicated youth. Each person and stop along the juvenile justice process has check points and specific duties to be accomplished. Beside the police one of the crucial entry personnel is the prosecuting attorney, who must decide about pursuing the case further. Interestingly, when statements are taken such as a confession the magistrate is not required to be an attorney, perhaps this provision exists due to the rural nature of some counties and locations in the state. Providing defense for indigent youth is accomplished most often through an appointed attorney process. For those attorneys with skills and experience the financial reward can be far greater than that of the prosecutor. As indicated perhaps the reward for prosecutors is not financial but rather prestige as it may lead to a judgeship in the future. The juvenile judge is one who must know law, due process and also have a passion and concern for family and youth matters. Constant training keeps them ready to fulfill their duties. Finally the juvenile probation mixes mentorship, law enforcement and court officer to assist

alleged and adjudicated youth. The working group of those in the Texas Juvenile Justice System is one held together by often two competing ideals rehabilitation of youth and protection of society.

Critical Review Questions

1. What advantages are there to being a defense attorney in juvenile justice? What about a prosecuting attorney?
2. What characteristics do you think make for a good juvenile court judge?
3. Are juvenile probation officers more police officers or life coaches to youth on probation?

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