







COP Limitations

- Two primary limitations on juvenile court's discretion to fashion COPs:
- **Vagueness Doctrine** – COPs must be clear & understandable enough to enforce.
- **No Delegation Doctrine** – Juvenile court can't delegate its authority to set COPs.



COPs "R" Not CORs!

- §§53.02(a) and 54.01(f), FC – Release may be conditioned on requirements **reasonably necessary** to insure child's appearance later in court.
- **Conditions of Release (CORs)** must be written and a copy given to the child.
- §54.01(r), FC – Parent can be ordered to assist child in complying with CORs.



Valid CORs

- CORs must be reasonably related to the likelihood of the child appearing at trial.
- **Valid CORs:**
 - Specifying child's place of residence;
 - Requiring regular attendance at school/work;
 - Imposing a curfew;
 - Reporting to a JPO at designated times.



Let's Get Started!



Objection, your Honor!

- **True or False** – To preserve error on appeal, a juvenile must object to the specific COP when it is imposed by the court.



True

- *In the Matter of R.P.*, 37 S.W.3d 76 (Tex.App.– San Antonio 2000).
- **R.P.:** COP deprives me of my constitutional right to earn a GED because of court's order to "attend school every day."
- **Held:** Failure to object to the COP when it was imposed waived R.P.'s complaint.



Void for Vagueness?

- **True or False** – COP is unconstitutionally vague:

“IT IS THEREFORE ORDERED, ...that M.A.H. is committed to Pegasus... for a period of not less than 3 months, but no more than 6 months, or until said child is successfully discharged by the facility.”



False... sort of

- *In the Matter of M.A.H.*, 2008 Tex.App.Lexis 6864 (Tex.App.–Corpus Christi 2008).
- Failing to object to COP affirmatively waived any complaint on appeal.
- **Concurring Opinion:** “I question whether the probation order actually compels [M.A.H.] to be successfully discharged in order to remain compliant with his probation conditions.”



Void for Vagueness?

- **True or False** – COP is unconstitutionally vague and overbroad:

That [Juvy] not “associate with anyone disapproved of by probation.”



True



- *California v. Sheena K.*, 153 P.3d 282 (Cal. 2007).
- **Sheena K:** “How do I know who probation doesn’t want me to associate with?!”
- **Held:** “[I]n the absence of an express requirement of knowledge, the probation condition imposed...is unconstitutionally vague.”



Knowledge Requirement



- **Do not associate with anyone:**
 - “whom you know or whom the PO informs you is a gang member”
 - “known to you to be a gang member”
 - “any other known [Name of Gang] gang member”
 - “known to be users or sellers of narcotics, felons or ex-felons”



No Saggy Pants Zone



- **True or False** – In 2008, a Florida judge ruled a law banning baggy pants that show off the wearer’s underwear to be unconstitutional.



True

- City of Riviera Beach banned “saggy pants.”
- 17-year-old jailed for one night.
- **Judge:** “We’re not talking about exposure of buttocks. No! We’re talking about someone who has on pants whose underwear are apparently visible to a police officer who then makes an arrest and the basis is he’s then held overnight, with no bond.”





No Tattoo Zone

- **True or False – COP** prohibiting a 15-year-old from obtaining any new tattoos, brands, burns, piercings or voluntary markings is unconstitutional.



False



- *In re Antonio C.*, 83 Cal.App.4th 1029 (Cal.Ct.App. 2000).
- **Antonio C.:** COP is overbroad and violates right to free speech/expression.
- **Held:** State interest in protecting kids justifies restriction on body marking.
- Also sufficiently related to rehabilitation.



“You got a warrant?”



- **True or False** – COP requiring that a juvenile probationer consent to a warrantless search of his or her residence is unconstitutional.



False



- *In re Jesus S.*, 2002 Cal.App.Lexis 151 (Cal.Ct.App. 2002).
- **J.S.:** COP bears no relationship to the offense [misdemeanor sexual battery].
- **Held:** “[T]he juvenile court was justified in imposing greater supervision over his actions, including..., imposition of a search condition.”



Other Valid Search Conditions

- JPO “shall have access to the minor...at all times.” Included entry into bedroom.
- “[P]ermit the search of his person, car, personal effects, or place of residence, night or day, without the necessity of a search warrant, at the direction of the Probation Officer or any peace officer.”
- “You and your residence...may be searched without a warrant...”



“Can They Do That?!”

- True or False – COP requiring that a juvenile “not reside in a home or be present in a vehicle unless the residents or owners have consented to a search of the home or vehicle for controlled substances” is constitutional.



False

- *In the Matter of J.S.*, 546 S.E.2d 407 (N.C.Ct.App. 2002).
- J.S.: COP places responsibility for success in hands of third parties and does not limit warrantless searches.
- Held: J.S.’s probation could be revoked through no fault of his own; COP is not specific enough to be enforced.



“Can They Do That?!”

- True or False – COP stating that JPO “shall have access to the minor ... at all times,” justified entry into juvenile probationer’s bedroom.



True

- *In re Curtis T.*, 1989 Cal.App.Lexis 1054 (Cal.Ct.App. 1989).
- **Curtis T.:** COP doesn’t authorize search and is no waiver of parents’ privacy rights.
- **Held:** “[A] reasonable person would understand the language of the access condition to permit entry into Curtis’s bedroom.”



Criminals “R” Us

- True or False – A North Carolina judge erred by imposing a special COP on a 14-year-old to publicly wear a 12” x 12” sign reading:
“I AM A JUVENILE CRIMINAL”



True

- *In the Matter of M.E.B.*, 569 S.E.2d 683 (N.C.Ct.App. 2002).
- COP was an impermissible punishment and violated public policy.
- Juveniles are not “criminals.”
- M.E.B.’s confidentiality was violated and her identity made public instead of permitting inspection of her juvenile records “by order of the court.”



Special COPs

- True or False – Juvenile court abused its discretion by ordering a probationer to:
 1. Regularly visit and place flowers on the victim’s grave site;
 2. Wear a necklace with victim’s picture;
 3. Not participate in school functions or activities.



False

- *In the Matter of J.B.*, 616 S.E.2d 385 (N.C.Ct.App. 2005).
- J.B.: No showing that COPs were in his or the State’s best interest.
- Held: Special COPs were fair, reasonable and related to needs of the child.
- Dissent: No showing that COPs would be in J.B.’s best interest.



Bon Voyage!

- True or False – It's constitutional to banish a juvenile probationer from the United States.
- **Judge:** "You will be returned to your grandparents. They'll return you to Mexico. You will not enter this country while on probation to this court... I don't care if you are a citizen."



False

- *In re James C.*, 2008 Cal.App.Lexis 1221 (Cal.Ct.App. 2008).
- **J.C.:** COP is unconstitutional.
- **Held:** James C. is right!
"Under the condition, James, a U.S. citizen, was completely banished from his country; the condition violated his constitutional rights of freedom of travel, assembly and association."



Also Illegal...

- The following COPs:
 - Two-year banishment to Iran;
 - Prohibition to enter a specific area of a city;
 - Relocation order from a community where probationer had lived for more than 20 yrs;
 - Plea bargain for defendant to leave state.



No TV for U!

- **True or False** – COP restricting juvenile’s access to TV for one year does not violate the 1st Amendment right to obtain information.
- **Judge:** [Juvy] “too susceptible to impression to be watching television.”



True and...

- *In re McDonald*, 515 S.E.2d 719 (N.C.Ct.App. 1999).
- Juvenile spray painted “Charles Manson Rules” after watching documentary.
- COP was directly related to the unlawful conduct and juvenile’s needs.
- COP did not regulate juvenile’s speech or ability to learn about Charles Manson.



False

- *U.S. v. Bello*, 310 F.3d 56 (2nd Cir. 2002).
- **Judge:** TV restriction to promote “self-reflection” and remorse.
- **Bello:** COP not reasonably related to crime and implicates 1st Amendment.
- **Held:** TV ban wasn’t reasonably related to one or more statutory sentencing factors.



Is COP “Narrowly Tailored?”



No Internet for U!

- **True or False** – It’s unconstitutional to prohibit a probationer from having access to the Internet and from “viewing, possessing, or obtaining pornography in any form.”



False

- *U.S. v. Locke*, 482 F.3d 764 (5th Cir. 2007).
- **Locke**: Denying Internet access was a greater 1st Amendment deprivation than was reasonably necessary.
- **Held**: “[T]he Internet prohibition... served the dual purpose of protecting the public and discouraging recidivism.”



COP on Internet Use

- Is this a reasonable Internet COP?

“[Juvy] is prohibited from viewing or possessing any sexually explicit material or having the same in his home and from using the Internet unsupervised.”



Orchiectomy, anyone?

- True or False – Juvenile court order to evaluate a 17-year-old male to determine the appropriateness of chemical castration is constitutional.



False!

- *In the Matter of R.B.*, 765 A.2d 396 (PA Super.Ct. 2000).
- COP was to determine R.B.’s “receptivity to pharmacological intervention.”
- **Held:** Court abused its discretion.
“Such a treatment protocol for a juvenile is so radical in nature and goes to the essence of basic human behavior as to require stringent safeguard in its application...”



Constitutional Issues Related to Conditions of Probations for Juveniles

In Texas, far more juveniles are placed on juvenile probation each year, either formal or informal, than are committed to the Texas Youth Commission (TYC). In fiscal year 2007, local courts sent about 51,623 youth to probation departments for supervision, including probation and deferred prosecution, while sending about 2,276 youth to TYC.¹ “Since 1929, when the first *Juvenile Court Statistics* report was published using 1927 data, probation has been the overwhelming choice of juvenile and family court judges.”²

In 2007, the Texas Legislature enacted comprehensive TYC reforms, mandating that only felony offenders can be committed to TYC and that TYC’s jurisdiction over youth ends at age 19 instead of age 21.³ Whether intended or not, this has resulted in a greater number of juveniles being placed on probation since June 8, 2007, when the legislative reforms went into effect. It is therefore increasingly important that terms and conditions of probation imposed on juvenile probationers comply with constitutional standards.

Legal Requirements

The Family Code provides that the court or a jury may place a child “on such reasonable and lawful terms” as the court may deem appropriate.⁴ The “terms of probation shall be written” and a copy of the probation order must be given to the child.⁵

According to Professor Bob Dawson, there are two primary limitations on the juvenile court’s discretion to fashion probation conditions: the vagueness doctrine and the prohibition on delegating to others the court’s authority to fix the conditions of probation.⁶

The vagueness doctrine requires that conditions of probation be clear and easily understood by the juvenile probationer. In other words, does the juvenile probationer understand what is permitted and prohibited under the terms and conditions of his or her probation?⁷ Additionally, the conditions cannot be so vague as to be unenforceable.

The no delegation doctrine requires that the judge, not the juvenile probation officer, parent or anyone else for that matter, determine and set the conditions of

¹ *Sunset Advisory Commission Staff Report*, p. 6 (November 2008).

² Patricia McFall Torbet, *Juvenile Probation: The Workhorse of the Juvenile Justice System*, OJJDP Juvenile Justice Bulletin (March 1996).

³ Deletion of §§54.04(s) and (t) and 54.05(k), Family Code; §61.084(e) and (g), Human Resources Code.

⁴ §54.04(d)(1), Family Code.

⁵ §54.04(f), Family Code.

⁶ Robert Dawson, *Texas Juvenile Law*, 7th ed., pp. 234 - 235 (Texas Juvenile Probation Commission, August 2008).

⁷ *In Matter of R.A.B.*, 525 S.W.2d 892 (Tex.Civ.App.–Corpus Christi 1975, no writ).

probation. It would be impractical, if not impossible, for the probation order to spell out every detail of the conduct that is mandated or prohibited.

It is sufficient if the general conduct is spelled out in terms sufficiently clear for the juvenile to understand and be able to obey. This is particularly true where the juvenile is placed on probation in the care of a home or institution. The court can allow the custodian to implement the court prescribed conditions by specifying the detailed method of obedience to those conditions. Although a requirement that the juvenile obey the reasonable rules and regulations of such a custodian vests a certain amount of discretion in the custodian, such discretion is necessary if the home or facility is to be successful in its rehabilitative efforts.⁸

Conditions of Probation are not Conditions of Release from Detention

Conditions of probation should not be confused with conditions of release from detention. The Family Code provides that a child's release from detention may be conditioned on requirements "reasonably necessary" to secure the child's appearance at later proceedings.⁹ The range of conditions of release that can be imposed on a child is limited only by the requirement that they be related to the likelihood of appearance at trial. "Examples of such conditions are specifying the child's place of residence, requiring regular attendance at school or work, imposing a curfew or requiring reporting to a probation officer at designated times."¹⁰

Valid vs. Invalid Conditions of Probation

A condition of probation is invalid if it: 1) bears no relationship to the crime of which the offender was adjudicated; 2) forbids conduct that is not reasonably related to future criminality; and 3) relates to conduct that is not itself criminal.¹¹ If an otherwise valid probation condition impinges on a juvenile's constitutional rights, the condition must be carefully tailored and reasonably related to the compelling State interest in reforming and rehabilitating the juvenile.¹²

A condition of probation that is impermissible for an adult probationer is not necessarily unreasonable for a juvenile.¹³ Since juveniles are thought to need more guidance and supervision than adults, their constitutional rights are more limited due to

⁸ *K.K.B. v. State*, 609 S.W.2d 824, 825-26 (Tex.Civ.App.—Texarkana 1980, no writ).

⁹ See §§53.02(a) and 54.01(f), Family Code.

¹⁰ Robert Dawson, *Texas Juvenile Law*, 7th ed., p. 89 (Texas Juvenile Probation Commission, August 2008).

¹¹ *People v. Lent*, 15 Cal.App.3d 481, 486 (Cal.Ct.App. 1975)

¹² *In re Antonio R.*, 78 Cal.App.4th 937, 941 (Cal.Ct.App. 2000).

¹³ *In re Tyrell J.*, 8 Cal.4th 68, 81-82 (Cal.Ct.App. 1994), *overruled on other grounds by In re Jaime P.*, 146 P.3d 965 (Cal. 2006).

the “special needs” of minors.¹⁴ Juvenile probationers, like adult probationers, have a diminished expectation of privacy by virtue of being placed on probation.¹⁵ As a result, a juvenile court may impose probation conditions that infringe on constitutional rights but only if the conditions are narrowly tailored to meet the needs of the juvenile.

Examples of Constitutional Conditions of Probation

The constitutionality of the following probation conditions has been upheld:

- Prohibiting a juvenile probationer from obtaining new tattoos and body markings. The court reasoned that this is analogous to requiring a probationer to obey all laws. The probation condition does not unduly burden free speech rights and is reasonably related to the probationer’s rehabilitation, as well as the juvenile court’s supervisory function to provide for the child’s safety and protection.¹⁶
- Requiring a juvenile probationer to submit to a warrantless search of his person, place of residence or any vehicle under his control by any probation officer or group home official. Given the probationer’s pattern of improper conduct and the need for greater control over that conduct, the court was justified in imposing greater supervision over the youth’s actions, including imposition of a search condition.¹⁷
- Permitting a juvenile probation officer to enter a probationer’s bedroom under a probation term stating that the probation officer “shall have access to the minor ... at all times.” The court noted that a reasonable person would understand the language of the access condition to permit entry into the probationer’s bedroom.¹⁸
- Requiring a probationer to: 1) visit and place flowers on the victim’s grave; 2) wear a necklace with the victim’s picture; and 3) not participate in school functions or activities. The court held these conditions of probation did not infringe on constitutionally protected rights.¹⁹
- Restricting access to television for one year where the evidence showed that the probationer was especially susceptible to the negative influences of television,

¹⁴ *In re Antonio R.*, 78 Cal.App.4th 937, 941 (Cal.Ct.App. 2000).

¹⁵ *In re Marcellus L.*, 279 Cal.Rptr. 901, 907-08 (Cal.Ct.App. 1991); see also *Griffin v. Wisconsin*, 483 U.S. 868, 107 S.Ct., 97 L.Ed.2d 709 (1987) (diminished expectation of privacy for adult probationers).

¹⁶ *In re Antonio C.*, 2000 Cal.App.Lexis 743 (Cal.Ct.App. 2000).

¹⁷ *In re Jesus S.*, 2002 Cal.App.Unpub.Lexis 151 (Cal.Ct.App. 2002).

¹⁸ *In re Curtis T.*, 1989 Cal.App.Lexis 1054 (Cal.Ct.App. 1989).

¹⁹ *In the Matter of J.B.*, 616 S.E.2d 385 (N.C.Ct.App. 2005).

which had contributed to her delinquent conduct. Since the condition related both to the unlawful conduct and to the probationer's need for rehabilitation it was within the judge's authority to impose such a restriction.²⁰

- Denying an adult probationer access to the Internet in a possession of child pornography case. The probationer argued that the Internet ban imposed a greater deprivation of his First Amendment right than was necessary. The court disagreed, noting that the condition served the dual purpose of protecting the public and discouraging recidivism.²¹

Examples of Unconstitutional Conditions of Probation

The following probation conditions were held to be unconstitutional or invalid:

- Prohibiting a juvenile probationer from associating "with anyone disapproved of by probation." To be constitutional, a probation condition must be sufficiently clear for the probationer to know what is required and for the court to determine whether the condition has been violated. In this case, the probationer could not know which persons were disapproved of by the probation department unless those persons are specified and made known to the probationer. Without "an express requirement of knowledge, the probation condition imposed ... is unconstitutionally vague."²²
- Requiring a juvenile probationer to wear a sign around her neck in public with the words "I AM A JUVENILE CRIMINAL" written in large letters was invalid for several reasons: 1) the probation condition impermissibly opened the juvenile's records to public display; 2) it subjected the probationer to a form of "intensive supervision" for which she was not eligible; and 3) it could amount to a *de facto* house arrest without statutory authority.²³
- Requiring a juvenile probationer to return to Mexico with his grandparents and to "not enter this country while on probation to this court." The probation condition was not reasonably related to the crime committed or to future criminality. It also did not have a rehabilitative purpose. It amounted to an unconstitutional banishment from the United States.²⁴

²⁰ *In re McDonald*, 515 S.E.2d 719 (N.C.Ct.App. 1999).

²¹ *United States v. Davis*, 482 F.3d 764 (5th Cir. 2007).

²² *In re Sheena K.*, 153 P.3d 282, 294 (Cal. 2007).

²³ *In the Matter of M.E.B.*, 569 S.E.2d 683 (N.C.App. 2002).

²⁴ *In re James C.*, 2008 Cal.App.Lexis 1221 (Cal.Ct.App. 2008).

- Prohibiting an adult probationer from watching television as part of a 10-month home detention because the condition was not reasonably related to one or more of the federal statutory sentencing factors or the abatement of future criminality. Since the challenged condition was outside the statutory grant of discretion, the appellate court declined to reach the First Amendment issue and remanded the case to the trial court for resentencing.²⁵
- Ordering a mentally ill juvenile to undergo an evaluation to determine his “receptivity to pharmacological intervention,” namely chemical castration, was an abuse of discretion for several reasons: 1) there was no statutory authority for treating juvenile sex offenders with the drug; 2) the professional literature showed that the drug has not gained acceptance in the medical community as a safe and reliable medical procedure; and 3) the drug’s experimental status, its limited availability and the content of the court’s order made it virtually impossible for the youth to fulfill the probation condition. Additionally, the probationer’s limited intelligence and mental condition made it dubious that he could truly give an informed consent.

“[S]uch a treatment protocol for a juvenile is so radical in nature and goes to the essence of basic human behavior as to require the most stringent safeguards in its application necessitating legislation with the accompanying hearings, reviews and study as a policy matter rather than being imposed randomly by courts as a condition of probation, without statutory guidelines.”²⁶

Conclusion

It is important to remember that juveniles, unlike adults, do not have a choice when it comes to being placed on probation. Adults may decide that the requirements of probation are too burdensome and instead elect to accept a jail term or a stint in the penitentiary. This is not an option for juveniles. In Texas, no disposition may be made unless the child is in need of rehabilitation or the protection of the public or the child requires that disposition be made.²⁷ If such a finding is made, the court or a jury may place a child on probation or, in the case of a felony, commit the child to TYC under an indeterminate sentence.²⁸ Given this lack of choice on the part of the juvenile, it is incumbent on juvenile justice practitioners to vigilantly protect the constitutional rights of all juvenile probationers. Conditions of juvenile probation should be narrowly tailored to

²⁵ United States v. Bello, 310 F.3d 56 (2nd Cir. 2002).

²⁶ *In the Matter of R.B.*, 765 A.2d 396 (Penn. 2000).

²⁷ §54.04(c), Family Code.

²⁸ §54.04(d)(1) and (2), Family Code.

meet the “special needs” of the juvenile offender rather than being overly broad or vague, and therefore an impermissible violation of the child’s constitutional rights.

2008 Tex. App. LEXIS 6864, *

IN THE MATTER OF M.A.H., A JUVENILE

NUMBER 13-07-426-CV

COURT OF APPEALS OF TEXAS, THIRTEENTH DISTRICT, CORPUS CHRISTI - EDINBURG

2008 Tex. App. LEXIS 6864

August 28, 2008, Memorandum Opinion Delivered
August 28, 2008, Memorandum Opinion Filed

On appeal from County Court at Law No. 1 of Calhoun County, Texas, Sitting as a Juvenile Court.

CASE SUMMARY

PROCEDURAL POSTURE: Juvenile defendant pleaded true to the offense of indecency with a child by exposure and was placed on probation for one year. The State filed a motion to modify disposition, and his probation was extended. During his extended probationary period, the State filed a second motion to modify disposition. The County Court at Law No. 1 of Calhoun County, Texas, revoked his probation and committed him to the Texas Youth Commission. Defendant appealed.

OVERVIEW: On review, defendant contended the trial court erred in revoking his probation and the evidence was legally insufficient to support revocation. The appellate court disagreed, finding first that because defendant did not object to the complained-of probation condition at any time other than on appeal, he failed to preserve this complaint for review. Further, the evidence showed that defendant was placed in a school for therapeutic purposes and was supposed to attend its sex-offender treatment program. However, he was unsuccessfully discharged from the program prior to the expiration of his commitment period. Thus, the trial court could have found that he violated the modified disposition with placement. Furthermore, the trial court could have found that defendant failed to successfully complete placement and was unsuccessfully discharged and, therefore, did not attend the required counseling or treatment which the Juvenile Services Department felt was necessary for his best interest in his rehabilitative effort. Defendant violated a probation condition, which was a reasonable and lawful order, and failed to show that the revocation of his probation was improper.

OUTCOME: The judgment was affirmed.

MEMORANDUM OPINION BY: [ROSE VELA](#)

M.A.H., a juvenile, pleaded true to the offense of indecency with a child by exposure¹ and was placed on probation for one year. During his probation, the State filed a motion to modify disposition, and the court extended his probation for an additional six months and committed him to the Pegasus School, which discharged him without a successful completion of the treatment program. During his extended probationary period, the State filed a second motion to modify disposition, and after a hearing, the court revoked his probation and committed him to the Texas Youth Commission (T.Y.C.). By two issues, M.A.H. argues the trial court erred in revoking his probation because the revocation resulted from the violation of a condition too vague for enforcement, and the evidence was legally insufficient to support revocation. We affirm.

FOOTNOTES

¹ See [TEX. PENAL CODE ANN. § 21.11\(a\)\(2\)](#) (Vernon 2003).

I. Vagueness of Probation [*2] Condition

In issue one, M.A.H. contends the trial court erred in revoking his probation because the revocation resulted from the violation of a condition too vague for enforcement. In *Rickels*, the court of criminal appeals restated its holding that "a defendant must complain at trial to the [community supervision] conditions he finds objectionable." [Rickels v. State, 108 S.W.3d 900, 902 \(Tex. Crim. App. 2003\)](#) (internal quotations omitted). By failing to object to the terms and conditions of probation at trial, a defendant affirmatively waives any complaints he or she may have had. *Id.*; [Speth v. State, 6 S.W.3d 530, 534 \(Tex. Crim. App. 1999\)](#). Here, the record does not reflect M.A.H. objected to the complained-of probation condition at any time other than on appeal. Accordingly, we hold M.A.H. failed to preserve this complaint for review. See [Speth, 6 S.W.3d at 535](#) (holding defendant could not complain of community-supervision conditions for first time on appeal). Issue one is overruled.

II. Sufficiency of the Evidence

In issue two, M.A.H. contends the evidence is legally insufficient to show he violated a probation condition.

A. Standard of Review

Juvenile courts are vested with broad discretion [*3] in determining whether to modify the disposition of children found to have engaged in delinquent conduct. [In re C.S., 198 S.W.3d 855, 857 \(Tex. App.-Dallas 2006, no pet.\)](#); [In re P.L., 106 S.W.3d 334, 337 \(Tex. App.-Dallas 2003, no pet.\)](#). The trial court abuses its discretion if it acts unreasonably or arbitrarily. [In re P.L., 106 S.W.3d at 337](#). In reviewing an order modifying disposition, we examine the entire record to determine whether the trial court acted unreasonably or arbitrarily or without reference to any guiding rules or principle. [In re C.S., 198 S.W.3d at 857](#); [In re P.L., 106 S.W.3d at 337](#).

Under [section 54.05\(f\) of the Texas Family Code](#), the trial court may modify a disposition to commit a child to T.Y.C. if, after a hearing, it finds by a preponderance of the evidence that the child violated a reasonable and lawful order of the court. [TEX. FAM. CODE ANN. § 54.05\(f\)](#) (Vernon Supp. 2008); [In re J.M., 133 S.W.3d 721, 724 \(Tex. App.-Corpus Christi 2003, no pet.\)](#).² In a probation-revocation case, the State meets the preponderance-of-the-evidence standard when the greater weight of the credible evidence creates a reasonable belief that the defendant violated a condition of his [*4] or her probation as alleged. See [Jenkins v. State, 740 S.W.2d 435, 437 \(Tex. Crim. App. 1983\)](#); [Johnson v. State, 943 S.W.2d 83, 85 \(Tex. App.-Houston \[1st Dist.\] 1997, no pet.\)](#). Furthermore, the trial court is the sole trier of fact at a probation-revocation hearing and determines the credibility of the witnesses and the weight to be given to their testimony. See [Johnson, 943 S.W.2d at 85](#). The evidence is examined in the light most favorable to the trial court's order. See [Garrett v. State, 619 S.W.2d 172, 174 \(Tex. Crim. App. 1981\)](#); [Johnson, 943 S.W.2d at 85](#).

FOOTNOTES

² In *In re J.M.*, we stated that [a] juvenile court may modify its prior disposition and order that [a] juvenile be committed to the Texas Youth Commission if the court finds by a preponderance of the evidence that the child violated a reasonable and lawful order of the court." [In re J.M., 133 S.W.3d 721, 724 \(Tex. App.-Corpus Christi 2003, no pet.\)](#) (internal quotations omitted).

B. The State's First Motion to Modify Disposition

The applicable probation conditions stated: "You [M.A.H.] are required to attend any counseling or treatment in which the Juvenile Services Department feels is necessary for your best interest in your rehabilitative [*5] effort;" and "The Juvenile-Respondent [M.A.H.] shall be committed to the Texas Youth Commission if Pegasus is unable to accept him." On November 8, 2006, pursuant to the State's first motion to modify disposition, the trial court signed an "ORDER MODIFYING DISPOSITION WITH PLACEMENT" that stated, in relevant part:

The Court finds, by a preponderance of the evidence, that the Juvenile Respondent, [M.A.H.], has violated a reasonable and lawful order of this Court, to-wit:

H. REHABILITATION AND TREATMENT:

2. You are required to attend any counseling or treatment in which the Juvenile Services Department feels is necessary for your best interest in your rehabilitative efforts.

On or about September 26, 2006, [M.A.H.] failed to abide by treatment program regulations. [M.A.H.] has received ninety-five (95) incident reports since admission to include escape risk, danger to self, danger to others, neglect in therapy, disruption of program and threat staff/peers etc.

The order reflects that the court extended M.A.H.'s probationary period for an additional six months. The order further stated: "THE COURT FINDS that the best interest of the Juvenile-Respondent and the community will be served by placing [*6] the Juvenile-Respondent outside the child's home and committing the Juvenile-Respondent to the care, custody and control of Pegasus" In addition, this order stated that M.A.H. "is hereby committed to Pegasus . . . for a period of not less than three (3) months, but no more than six (6) months, or until said child is successfully discharged by the facility."

C. Hearing on State's Second Motion to Modify Disposition

On February 7, 2007, the State filed its second motion to modify disposition, alleging, in relevant part, that on November 8, 2006, the court "held a modification of disposition hearing," at the conclusion of which the court placed M.A.H. "on probation for an additional period of six (6) months under the conditions set forth by this Court in the *Order Modifying Disposition*." ³ The motion further alleged that M.A.H. violated the terms and conditions of his probation as follows: "You are required to attend any counseling or treatment in which the Juvenile Services Department feels is necessary for your best interest in your rehabilitative efforts. On or about January 25, 2007, [M.A.H.], failed to successfully

complete placement and was unsuccessfully discharged."

FOOTNOTES

³ Emphasis **[*7]** in original.

On June 15, 2007, the trial court held a hearing on the State's second motion to modify disposition. ⁴ The sole witness at the hearing was Cindy Rains, the Chief Juvenile Probation Officer for Calhoun County. She testified that two of M.A.H.'s probation conditions were that he attend Pegasus School until successfully discharged by the facility and that he obey the rules and regulations of that school and perform according to his ability. She further testified that his assignment to Pegasus by her department was "[t]herapeutic in purpose" and that he "was attending Pegasus for their sex offender treatment program." When the prosecutor asked her, "[W]as [M.A.H.] successfully discharged by Pegasus School?", she replied, "No, sir. He was not."

FOOTNOTES

⁴ See [TEX. FAM. CODE ANN. § 54.05](#) (Vernon Supp. 2008).

On redirect-examination, the State asked Ms. Rains:

Q. Ms. Rains, they [Pegasus] contacted you to pick up [M.A.H.]; is that correct?

A. Yes, sir, they did.

Q. And at that time you were informed that it was an unsuccessful discharge?

A. Yes.

Her testimony showed that law enforcement picked M.A.H. up from the Pegasus School on January 25, 2007.

M.A.H. did not testify, and the defense called **[*8]** no witnesses to testify on his behalf.

After hearing Rains's testimony, the trial court referred to its previous order modifying disposition with placement and stated in open court: "[I]n this order he [M.A.H.] was ordered to be committed to Pegasus until successfully discharged" and "[t]he Court will find that there's no reasonable alternative. I placed him in Pegasus, and we are out of alternatives. I'll place him in T.Y.C."

After the hearing, the trial court signed an "ORDER MODIFYING DISPOSITION WITH COMMITMENT TO THE TEXAS YOUTH COMMISSION," in which it stated, in relevant part: The Court finds, by preponderance of the evidence, that the Juvenile-Respondent, [M.A.H.], has violated a reasonable and lawful order of this Court, to-wit:

H. REHABILITATION AND TREATMENT:

2. You are required to attend any counseling or treatment in which the Juvenile Services Department feels is necessary for your best interest in your rehabilitative efforts.

On or about January 25, 2007, [M.A.H.], failed to successfully complete placement and was unsuccessfully discharged.

The order committed M.A.H. to the care, custody, and control of T.Y.C.

D. Analysis

As a condition of probation, M.A.H. was required to attend [*9] any counseling or treatment in which the Juvenile Services Department felt was necessary for his best interest in his rehabilitative efforts. The 2006 order modifying disposition with placement extended his probation for an additional six months and committed him to Pegasus "for a period of not less than three (3) months, but no more than six (6) months, or until said child is successfully discharged by the facility." Rains testified that M.A.H. was placed in the Pegasus School for therapeutic purposes, and he was supposed to attend its sex-offender treatment program. However, according to Rains, M.A.H. was unsuccessfully discharged from the program offered at the Pegasus School. His unsuccessful discharge from the Pegasus School occurred prior to the expiration of his commitment period of not less than three months but no more than six months. Because M.A.H. was unsuccessfully discharged from the Pegasus School, the court could find by a preponderance of the evidence that he violated its 2006 order modifying disposition with placement. Furthermore, the court could find by a preponderance of the evidence that M.A.H. failed to successfully complete placement and was unsuccessfully discharged [*10] and, therefore, did not attend the required counseling or treatment which the Juvenile Services Department felt was necessary for his best interest in his rehabilitative effort; in this case, the required sex-offender therapy which M.A.H. was supposed to attend at the Pegasus School. Accordingly, we hold that M.A.H. violated a probation condition and that he violated a reasonable and lawful order of the court. Therefore, M.A.H. has failed to show the court abused its broad discretion by revoking his probation and committing him to T.Y.C. Issue two is overruled.

In addition, pending before this Court is appellant's motion for personal bond. The motion for personal bond is here by DENIED by this Court.

III. Conclusion

The trial court's judgment is affirmed.

ROSE VELA, Justice

Concurring Memorandum Opinion

by Justice Yanez.

Memorandum Opinion delivered and filed this 28th day of August, 2008.

CONCURRING MEMORANDUM OPINION BY: [LINDA REYNA YANEZ](#)

I agree with the majority opinion in all respects. I write separately, however, to make a few additional observations.

The probation order in the instant case has been a source of confusion for this Court. Judging from [*11] the record and arguments raised on appeal, the order has also confounded M.A.H., the State, and the trial court. Because the importance of clarity in a probation order cannot be underscored -- and because it is probable that M.A.H.'s probation order is composed of boilerplate language that is, and will continue to be, used to

formulate additional orders--I shall discuss the sources of confusion in M.A.H.'s order with the hope that such discussion may aid future parties and trial courts from Calhoun County, and inspire an abandonment of similarly worded orders.

FOOTNOTES

¹ See [Caddell v. State, 605 S.W.2d 275, 277 \(Tex. Crim. App. 1980\)](#) ("It is well settled that, though not the same as a criminal trial, a proceeding to revoke probation portends a possible deprivation of liberty, and as such, the application of appropriate due process of law is constitutionally required."); [Harris v. State, 608 S.W.2d 229, 230 \(Tex. Crim. App. 1980\)](#) (holding that a probationer is not afforded due process when his probation is revoked for violating a probation condition that is so vague and indefinite, that it did "not inform the probationer with sufficient certainty of what he [was] to do").

In their briefs and [*12] at oral argument, the parties in this cause argued over whether M.A.H. violated a condition of probation by failing to be *successfully* discharged from Pegasus. According to the State's brief, "It was abundantly clear that Juvenile Services was requiring successful completion of the Pegasus program by Appellant for treatment purposes and that Appellant was unsuccessfully discharged from the program." ² M.A.H., on the other hand, argued that he was not required to successfully complete the Pegasus program, but was only required to remain at the program for three to six months--a requirement he more than satisfied.

FOOTNOTES

² State's Brief at 7.

The source of the parties' debate stems from the following provision of M.A.H.'s probation order:

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that [M.A.H.] is hereby committed to Pegasus in accordance with Chapter 61 of the Texas Human Resources Code, and [Section 54.04 of the Texas Family Code](#), for a period of not less than three (3) months, but no more than six (6) months, **or** until said child is successfully discharged by the facility. [M.A.H.] is ordered placed in the custody of the Calhoun County Juvenile Probation Department pending transportation the [*13] [sic] proper facility. ³

Despite the State's contention that it is "abundantly clear" that successful completion of the Pegasus program is required, I question whether the probation order actually compels M.A.H. to be successfully discharged in order to remain compliant with his probation's conditions.

FOOTNOTES

³ Emphasis added.

If meaning is to be given to all the terms in the above provision, one is compelled to read the provision and the conditions therein as being satisfied if M.A.H. either (1) remains in

Pegasus for six months, or (2) remains in Pegasus until successfully discharged. Though I doubt that the State and the trial court intended for the provision to afford M.A.H. such flexibility, their intent must surrender to the plain meaning of the provision's text. The fact of the matter is that M.A.H. was in Pegasus for over six months; accordingly, M.A.H. satisfied the above provision.

It should further be noted, however, that M.A.H.'s placement at Pegasus for six months only satisfied the aforementioned provision--it did not satisfy the entirety of the probation order. The order also contains the following provisions:

IT IS ALSO CONSIDERED, ORDERED AND ADJUDGED BY THE COURT that the child, **[*14]** [M.A.H.], now comes under guidance, and control for one (1) year, subject to extensions not to exceed one (1) year each until the child becomes eighteen (18) years of age unless discharged prior thereto subject to subsequent and additional proceedings under the provisions made by the statute in such cases, and that the said the child [sic], [M.A.H.] be and is hereby placed on probation in accordance with Title 3, Texas Juvenile Justice Code and upon the following reasonable and lawful terms and conditions:

CONDITIONS OF PROBATION

You are hereby advised that under the laws of Texas, the court determines the terms and conditions of our [sic] probation. If you do not follow all these rules, the Court can take away your probation.

IT IS THE ORDER OF THIS COURT that beginning November 16, 2005, you shall comply with and obey the following conditions of probation:

. . . .

H. REHABILITATION AND TREATMENT:

1. You will participate in any diversion program supervised or sponsored by the Calhoun County Juvenile Department as directed by your probation officer.
2. You are required to attend any counseling or treatment in which the Juvenile Services Department feels is necessary for your best interest **[*15]** in your rehabilitative efforts. Under these provisions, it would appear, despite M.A.H.'s arguments to the contrary, that M.A.H. can be compelled to attend counseling and treatment at Pegasus for more than six months, should the Juvenile Services Department feel it "necessary for [his] best interest in [his] rehabilitative efforts." Though the first provision discussed appears to limit the amount of time M.A.H. has to stay in Pegasus (i.e., "no more than six (6) months"), that apparent limitation is subtly swallowed by the latter provisions discussed herein. Therefore, the State was at liberty to argue that M.A.H. had violated his probation by failing to attend counseling or treatment at Pegasus--as a result of his unsuccessful discharge--even though M.A.H. had already remained there for over six months.

LINDA REYNA YANEZ,

Justice

Concurring Memorandum Opinion delivered and filed this the 28th day of August, 2008.