

**STATE BAR  
SECTION REPORT  
JUVENILE LAW**

**VOL. 22, NO. 4  
DECEMBER 2008**

**OFFICERS**

**Chair:** Tim Menikos  
2701 Kimbo Road  
Fort Worth, TX 76111  
(817) 838-4600

**Chair-Elect:** William Connolly  
2930 Revere Street  
Houston, TX 77098-5607  
(713) 520-5757

**Secretary:** Nydia Thomas  
P.O. Box 13547  
Austin, TX 78711  
(512) 424-6683

**Treasurer:** Chris Hubner  
P.O. Box 13547  
Austin, TX 78711  
(512) 424-6677

**Immediate Past Chair:** Brian Fischer  
6200 Gulf Freeway, Suite 202  
Houston, TX 77023  
(713) 520-7500

**COUNCIL**

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Marisela Ledesma	Edinburg		
Laura Peterson	Garland		

**Newsletter Editor:** Associate Judge Pat Garza  
386th District Courts  
235 E. Mitchell  
San Antonio, Texas 78210  
patgarza386@sbcglobal.net

**Newsletter Secretary:** Debbie Steed

**Website:** [www.juvenilelaw.org](http://www.juvenilelaw.org)

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**CHAIR'S MESSAGE**  
**by Tim Menikos**

As I write this the Election results are being “ciphered” through and we are all trying to decide what this means for each of us individually and all of us collectively. I hope that as a group, those of us who deal in the area of Juvenile Law and Delinquency issues will continue to make the choices that develop a reasonable and rational way of dealing with the problems we face.

Juvenile Delinquency is something that affects us all as a community, these are not just children, they are our children, and the soon to be adult members of our society. As I have in the past, I again encourage you to let us all know of any successes you are experiences, so we can pass them on and adopt the efforts if possible.

**EDITOR'S FOREWORD**  
**by Pat Garza**

On November 4, 2008, the United States of America conducted an election that can be described as nothing less than historic. The following is my interpretation of the evolution of a nation as seen through the eyes of a civil rights timeline.

During the 1800's the Supreme Court of the United States reinforced and promoted slavery. In 1857, it handed down the *Dred Scott* decision stating that blacks could not be citizens. In 1896, in *Plessy vs. Ferguson* they upheld racial segregation, under the doctrine of “separate but equal.” However, between those two decisions a very important event in American history took place. In 1860, Abraham Lincoln was elected the 16th President of the United States and in 1862 he issued the Emancipation Proclamation.

By the mid-1900's times were changing and so was the Supreme Court. In 1954, it reversed *Plessy* with the landmark decision of *Brown vs. Board of Education*, declaring that racial segregation is a violation of the Equal Protection Clause of the Fourteenth Amendment. The next year, Rosa Parks, a young black woman, was arrested, tried, and convicted for refusing to give up her seat to make room for a white passenger on a Montgomery bus. Because of what happened to Rosa Parks, in 1956 a Federal Court ordered Montgomery's buses desegregated.

In 1962, James Meredith, a young black man, was escorted by a force of U.S. Marshals into the University of Mississippi after Mississippi Governor Ross R. Barnett proclaimed that “no school will be integrated in Mississippi while I am your Governor.” The next year, George Wallace, Governor of Alabama, tried to block the integration of the University of Alabama. It took a force sent by President John F. Kennedy to make the Governor step aside, allowing for the enrollment of two black students. Later that year, Dr. Martin Luther King, Jr. delivered his historic “I Have a Dream” speech to over 200,000 people advocating racial harmony at the Lincoln Memorial in Washington D.C.

In 1965, President Lyndon B. Johnson signed the Voting Rights Act.

The civil rights movement then took a turn for the worst. In 1968, Dr. Martin Luther King Jr. was assassinated in Memphis, Tennessee, at the age of 39. While it was a tragic blow to the civil rights movement and to the country as a whole, both continued to move forward.

In 1983, fifteen years after his death, a bill creating a federal holiday in honor of Dr. King was signed into law, and on January 20, 1986, the first national celebration of the Dr. Martin Luther King, Jr. holiday took place.

On January 20, 2009, twenty three years to the day after America celebrated the first national holiday for Dr. King, and 151 years after the Supreme Court held in *Plessy v. Ferguson*, that blacks could not be citizens, Barack Obama, an African American, will be sworn in as the 44<sup>th</sup> President of the United States of America.

Rosa Parks, James Meredith, Abraham Lincoln, John Kennedy, Lyndon Johnson, Dr. Martin Luther King Jr. and thousands of others sacrificed to achieve that which they had been told was unachievable. They did, that which they had been told was undoable. And they changed, that which they had been told was unchangeable. When it came to the civil rights movement, a voice of one was but a single song of courage. But the voices of many became an orchestra of change. For them, and for the far too many that have suffered, the 2009 Presidential Inauguration will be their opus.

**Texas Juvenile Law, 7<sup>th</sup> Edition.** Texas Juvenile Law, 7<sup>th</sup> Edition by Robert O. Dawson and updated by Christian A. Hubner has been released. These books are the most comprehensive and up to date reference books on Texas Juvenile Law in existence. You can order online at [www.tjpc.state.tx.us](http://www.tjpc.state.tx.us). If you have questions, contact Diane Laffoon at 512.424.6682 or [Diane.Laffoon@tjpc.state.tx.us](mailto:Diane.Laffoon@tjpc.state.tx.us).

**22nd Annual Robert Dawson Juvenile Law Institute.** The Juvenile Law Section's Juvenile Law Institute will be held on February 19-21, at the Westin Galleria Hotel in Houston, Texas. Chair-elect William Connolly and his planning committee are already working on putting together an excellent and practical conference.

**Officer and Council Nominees.** The annual Juvenile Law Section meeting will be held in conjunction with the February 19 Juvenile Law Conference. The Juvenile Law Section's nominating committee submitted the following slate of nominations:

Bill Connolly, Chair  
Chris Hubner, Chair-Elect  
Nydia Thomas, Treasurer  
Jill Mata, Secretary  
Tim Menikos, Immediate Past Chair

There will be two open slots available for Council members whose terms will expire 2012, and one reappointment. The nominations presented by the Nominations Committee of the Juvenile Law Section will be:

Anne Campbell, Houston;  
Kevin Collins, San Antonio; and  
Kaci Sohrt, Austin (Reappointment to Council)

Nominations from the floor during the meeting will be accepted. If you have someone that you would like to nominate from the floor, contact the Chair of the Nominations Committee, Brian Fischer, at [bjflaw@hotmail.com](mailto:bjflaw@hotmail.com).

*Four score and seven years ago our fathers brought forth on this continent, a new nation, conceived in liberty, and dedicated to the proposition that all men are created equal...*

**Abraham Lincoln**

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**22<sup>nd</sup> Annual Juvenile Law Conference**  
**ROBERT O. DAWSON JUVENILE LAW INSTITUTE**

February 18-21, 2009 | The Westin Galleria | Houston, Texas

*This is just a summation of the full conference brochure. To get a copy of the brochure in its entirety, visit us online at <http://www.juvenilelaw.org/CLE.htm>*

## SCHEDULE OF EVENTS

Below is a tentative schedule of events. All sessions are subject to change. The final agenda will be available online at [www.juvenilelaw.org/CLE](http://www.juvenilelaw.org/CLE) a minimum of two weeks prior to the conference.

### YOU SPOKE AND WE LISTENED...

This year's expanded conference agenda is now  
 2 ½ days and 15.75 MCLE Hours (including 2.0 Hours of Ethics)!

### WEDNESDAY, FEBRUARY 18, 2009

- 4:00 p.m. Early Registration
- 5:30 p.m. Welcoming Reception

### THURSDAY, FEBRUARY 19, 2009

**5.75 HOURS (INCLUDING 1.0 HOUR OF ETHICS)**

- 8:00 a.m. Registration and Continental Breakfast (*provided*)
- 9:00 a.m. Welcoming Remarks
- 9:15 a.m. Keynote Address
- 9:45 a.m. Arrest and Confessions
- 10:45 a.m. Break
- 11:00 a.m. Ethics in Juvenile Cases
- 12:00 p.m. Lunch (*on your own*)
- 1:30 p.m. The Role of Gangs in the Juvenile Justice System
- 2:00 p.m. Female Offending in the Juvenile Justice System
- 2:30 p.m. Mental Health Disabilities
- 3:00 p.m. Break
- 3:15 p.m. New Trends in Diversionary Programs
- 4:00 p.m. Over-Criminalization of Juvenile Offenders and the Rise of Recidivism and Certification
- 5:00 p.m. Adjourn
- 5:10 p.m. Juvenile Law Section Annual Meeting and Election of Officers (*all are invited*)

### Important Dates...

#### January 28

Last day to receive discount hotel rate

#### February 5

Last day to register and/or pay to receive early-bird discount

#### February 16

Last day to cancel and receive partial refund

### Conference, Registration and Social Events at a Glance...

#### Wednesday, February 18, 2009

- 4:00 p.m. – 5:30 p.m. Registration
- 5:30 p.m. – 7:00 p.m. Welcoming Reception

#### Thursday, February 19, 2009

- 8:00 a.m. – 5:00 p.m. Registration
- 9:00 a.m. – 5:00 p.m. Conference
- 5:10 p.m. – 5:45 p.m. Section's Annual Meeting and Election of Officers

#### Friday, February 20, 2009

- 8:00 a.m. – 5:00 p.m. Registration
- 8:30 a.m. – 5:00 p.m. Conference
- 5:30 p.m. – 7:30 p.m. Reception and Silent Auction

#### Saturday, February 21, 2009

- 8:00 a.m. – 12:00 p.m. Registration
- 8:30 a.m. – 12:00 p.m. Conference

### Interested in Being a Sponsor or Exhibitor?

Contact Susan Clevenger at  
 281.580.4501 or [gtclevenger@yahoo.com](mailto:gtclevenger@yahoo.com).

### Conference Questions and Correspondence

Juvenile Law Section | c/o Kristy Almager  
 P.O. Box 13547 | Austin, Texas 78711  
 Phone: 512.424.6710 | Fax: 512.424.6718  
 Email: [Kristy.Almager@tjpc.state.tx.us](mailto:Kristy.Almager@tjpc.state.tx.us)

**FRIDAY, FEBRUARY 20, 2009****6.75 HOURS (INCLUDING 1.0 HOUR OF ETHICS)**

- 8:00 a.m. Continental Breakfast (*provided*)
- 8:30 a.m. How Mandatory Sex Offender Registration Leads to Increased Recidivism for Juveniles
- 9:30 a.m. Drug Courts: Why They are So Important and Effective Strategies for Communities
- 10:30 a.m. Break
- 10:45 a.m. Gangs and the Internet
- 11:45 a.m. TYC Scholarship Committee Presentation
- 12:00 p.m. Lunch (*provided*)
- 1:00 p.m. Track A: Delinquency Issues  
Track B: Juvenile Probation Issues  
Track C: DFPS Issues
- 5:00 p.m. Adjourn
- 5:30 p.m. Reception and Silent Auction

**SATURDAY, FEBRUARY 21, 2009****3.25 HOURS (NO ETHICS)**

- 8:00 a.m. Continental Breakfast (*provided*)
- 8:30 a.m. Adjudicative Competence
- 9:15 a.m. Restorative Justice in the Juvenile Justice System
- 10:00 a.m. Break
- 10:15 a.m. Texas Youth Commission
- 10:45 a.m. Legislative Update
- 11:15 a.m. Case Law Update
- 12:00 p.m. Adjourn

**Make Your Voice Heard...****Attend the Juvenile Law Section's Annual Meeting and Election of Officers**

The Juvenile Law Section will hold its Annual Meeting and Election of Officers on **Thursday, February 19** at 5:10 p.m. in the Ballroom of the Westin Galleria Hotel. All members of the Juvenile Law Section are encouraged to attend the election. The nominations include:

Bill Connolly, Chair  
Chris Hubner, Chair-Elect  
Nydia Thomas, Treasurer  
Jill Mata, Secretary  
Tim Menikos, Immediate Past Chair

There will be two open slots available for Council members whose terms will expire 2012, and one reappointment. The nominations presented by the Nominations Committee of the Juvenile Law Section will be:

Anne Campbell, Houston;  
Kevin Collins, San Antonio; and  
Kaci Sohrt, Austin (Reappointment to Council)

Please note that nominations from the floor will be accepted. If you have someone that you would like to nominate from the floor, please contact the Chair of the Nominations Committee, Brian Fischer, at [bjflaw@hotmail.com](mailto:bjflaw@hotmail.com).

**REGISTRATION FEES AND DEADLINES**

	<b>EARLY Registration and Payment Received By Feb 5</b>	<b>LATE / ON-SITE Registration or Payment Received After Feb 5</b>
Members of the Juvenile Law Section and Judges, Associate Judges, Referees, and Masters	\$225	\$300
Non-Members of the Juvenile Law Section	\$250	\$300
CD of Conference Materials Only	\$50	\$75

- ★ Conference fees are inclusive of attendance to any or all scheduled days. No special rate is available for partial attendance, students or non-profit agencies.
- ★ If you need clarification on whether or not you are a member of the Juvenile Law Section, please contact the State Bar of Texas Sections Division at 512.427.1420 or view your MyBarPage online at [www.texasbar.com](http://www.texasbar.com).
- ★ NOTE: You cannot register for this conference through the State Bar.

**HOW TO REGISTER**

To register, please complete the registration form on the following page. You may fax or mail in your completed registration form to the contact listed at the bottom of the page. Online registration is not available.

**22<sup>nd</sup> Annual Juvenile Law Conference**  
**ROBERT O. DAWSON JUVENILE LAW INSTITUTE**

February 18-21, 2009 | The Westin Galleria | Houston, Texas

**REGISTRATION FORM**

**STEP 1: GENERAL INFORMATION**

PRINTED NAME	BAR CARD NUMBER
JOB TITLE	
COUNTY	AGENCY / DEPARTMENT
ADDRESS	
CITY, STATE, ZIP	
PHONE (     )	EMAIL*

\* Please be diligent in providing an accurate, legible email address. Emails will be sent both for registration confirmation and to email the materials.

**STEP 2: REGISTRATION FEES AND COURSE MATERIALS (CHECK ONE)**

EARLY Registration and Payment Recd By Feb 5	LATE / ON-SITE Registration or Payment Recd After Feb 5
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Members of the Juvenile Law Section and Judges, Associate Judges, Referees, and Masters	<input type="checkbox"/> \$225	<input type="checkbox"/> \$300
Non-Members of the Juvenile Law Section	<input type="checkbox"/> \$250	<input type="checkbox"/> \$300
I cannot attend the Conference, however, I want to purchase the CD of materials only	<input type="checkbox"/> \$50	<input type="checkbox"/> \$75

**STEP 3: SOCIAL EVENTS**

- Please check here is you will be attending the Welcoming Reception on Wednesday, February 18, from 5:30 p.m. – 7:00 p.m.  
 Please check here is you will be attending the Luncheon on Friday, February 20, from 12:00 p.m. - 1:15 p.m.  
 Please check here is you will be attending the Silent Auction and Reception on Friday, February 20, from 5:30 p.m. – 7:30 p.m.

**STEP 4: PAYMENT**

Method of payment can be made by credit card, check or money order made payable to the Juvenile Law Section. No purchase orders or vouchers will be accepted. Mail your registration form, along with payment to: Juvenile Law Section, c/o Kristy Almager, P.O. Box 13547, Austin, Texas 78711. An e-confirmation will be sent once you are registered.

Method of Payment:  Check  Money Order  Visa  MC  American Express  Discover  
*[All information requested below is required if paying by credit card.]*

CARD NUMBER	EXPIRATION
VERIFICATION CODE	NAME AS IT APPEARS ON THE CARD
BILLING ADDRESS (IF DIFFERENT THAN ABOVE)	
SIGNATURE	DATE

You should receive an electronic confirmation via email within 48-72 hours.  
Please note that this confirmation is for receipt of your registration, not necessarily your registration fee.  
Please print a copy of your confirmation or this form and mail it along with payment (as specified in the email confirmation).

**CONFERENCE QUESTIONS AND CORRESPONDENCE**  
Juvenile Law Section I c/o Kristy Almager  
P.O. Box 13547 I Austin, Texas 78711  
Phone: 512.424.6710 I Fax: 512.424.6718 I Email: Kristy.Almager@tjpc.state.tx.us

## HOTEL ACCOMMODATIONS

The Conference will be held at the Westin Galleria located in Uptown Houston. The Westin is connected to The Galleria Shopping Center (Houston's #1 attraction and the fourth largest shopping center in North America – over 350 stores).

### WESTIN GALLERIA HOTEL

5060 West Alabama | Houston, Texas 77056

Phone 713.960.8100 | Fax 713.960.6553

<http://www.starwoodhotels.com/westin/>

Check-In is at 3:00 p.m. | Check-Out is at 12:00 p.m.

\$85 (Single) | \$125 (Double)

Once the room block is full or if reservations are made after the January 28, 2009 deadline, the hotel will accept reservations at its prevailing rate, based on availability.

### RESERVATIONS

Make your reservations online at

<http://www.starwoodmeeting.com/>

[StarGroupsWeb/res?id=0712144912&key=482CD](http://www.starwoodmeeting.com/StarGroupsWeb/res?id=0712144912&key=482CD).

This is a customized website for attendees of the Juvenile Law Conference only, therefore, the rates listed should automatically be at the contracted rate.

You may also contact the West directly at 713.960.6553. If you call to make accommodations, please specify that you are with the Juvenile Law Section to ensure the special conference rates apply.

## SEE THE ATTRACTIONS

Experience the sights and sounds of Houston. This is just a snapshot of some of the exciting things to do during your stay. Go online and explore the possibilities.

The Houston Convention and Visitor's Bureau wants to make your stay as pleasurable as possible. For your valuable coupons for local dining and attractions, visit the Bureau online and click on special offers at <http://www.visithoustontexas.com/>.

## HELP SUPPORT THE TYC SCHOLARSHIP FUND...

What better way to spend an evening than to have the opportunity to network with your colleagues and support a great cause? The Reception and Silent Auction is scheduled for Friday evening from 5:30 p.m. – 7:30 p.m., with light hors d'oeuvres and a cash bar. It is now in its 4<sup>th</sup> year of existence and, with your help, the amount of money the Juvenile Law Section has raised has increased tremendously. All proceeds raised at the silent auction are used to provide scholarships for Texas Youth Commission (TYC) youths continuing their education after being paroled from TYC facilities. The scholarship fund is a worthwhile and successful program directly benefiting youth who have been through the Texas juvenile justice system.

In addition to attending and participating, items are needed for the Silent Auction. Please help us make this a successful event and make an item donation. You can donate items prior to or at the conference upon arrival.

Can't attend the Reception and Silent Auction but still want to contribute to the cause? Donations will be accepted on-site at the conference. Please see the registration table upon arrival for information.

This year promises to be even bigger and better! For additional information, or if you would like to donate items to the silent auction, please contact Susan Clevenger at 281.580.4501 or [gtclevenger@yahoo.com](mailto:gtclevenger@yahoo.com).

Join us for a

## *Welcoming Reception*

Wednesday, February 18, 2009

5:30 p.m. – 7:00 p.m.

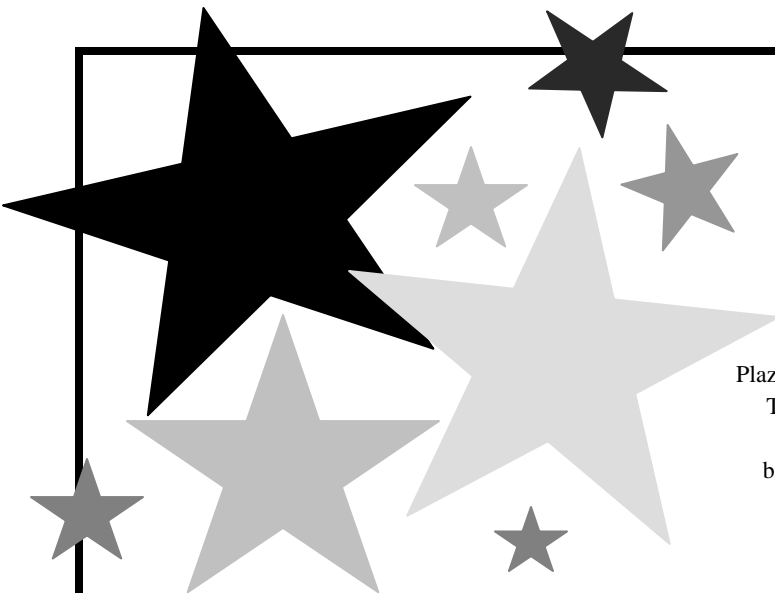
Register early between 4:00 p.m. – 5:30 p.m. in the Plaza Room and then come on over to the welcoming reception.

This is an ideal opportunity to network with your colleagues.

Enjoy light hors d'oeuvres and a cash bar and enjoy the beginning of what's sure to be a great conference experience.

Free and open to all conference attendees.

Please RSVP using the registration form.



## REVIEW OF RECENT CASES

### CRIMINAL PROCEEDINGS— PRIOR JUVENILE FELONY ADJUDICATION IS NOT PRIOR FELONY FOR THE PURPOSES OF APPLYING FOR PROBATION IN ADULT COURT.

¶ 08-4-1. **Thompson v. State**, \_\_\_S.W.3d\_\_\_, No. 03-07-00255-CR, 2008 WL 3984375 (Tex.App.—Austin, 8/29/08).

**Facts:** A jury found defendant, Thompson guilty on two counts of aggravated robbery with a deadly weapon, found an enhancement allegation true, and assessed sentence at twenty-five years in prison. The enhancement was from a juvenile felony adjudication where the defendant had been committed to TYC.

Thompson was identified by witnesses as the man who entered a convenience store, fired a gun, threatened several people, and demanded (and was given) money from the cash register. The clerk at the register recognized Thompson as one of her regular customers and the robber. Other eyewitnesses at the store identified Thompson as the robber when he was taken to the store shortly after the offense. A customer called 911 and followed Thompson across a muddy field to a nearby apartment complex. Police followed muddy footprints to an apartment in which they found Thompson and a gun. Gunshot residue was found on Thompson, but not the other occupant of the apartment. Ballistics from the gun matched those on the shell found at the store. The video surveillance tape of the robbery was shown at trial. The jury found Thompson guilty of aggravated robbery by use of a deadly weapon.

Thompson complains that he was improperly prohibited from discussing probation at voir dire. The State filed a motion in limine to prevent “[a]ttempts by defense counsel to voir dire on the issue of probation as the Defendant is ineligible.” After hearing arguments, the court stated, “I’m going to find that [juvenile felony] adjudication is a final felony conviction for the purpose of making him probation ineligible under Article 42-42.12, Section 4(f)-4(e), and, therefore, I’m not going to permit you to voir dire on probation.” During his voir dire examination, Thompson’s counsel re-urged his objection and desire to discuss probation, and was again refused.

At punishment, the State presented a fingerprint expert who testified that fingerprints he took from Thompson matched those in Thompson’s juvenile records. The records include Thompson’s adjudication of delinquency and commission to the Texas Youth Com-

mission for the offense of arson. The trial court took judicial notice that arson is a felony. Thompson’s attorney cross-examined the fingerprint expert regarding his technique. Thompson’s father testified at length about Thompson’s experience in TYC. At one point, the following exchange occurred between Thompson’s attorney and father:

Q. So this is about a year before he went to TYC?

A. Correct, I believe so.

Q. And he went to TYC for arson?

A. I believe so.

The focus of Thompson’s case at punishment was that he was a young man who had mental and emotional conditions (including diagnoses of attention deficit hyperactivity disorder, mental retardation, schizoaffective disorder, bipolar disorder, oppositional defiance, anxiety, and depression) that overwhelmed his parents and caused him to be exposed to an unsettled home life, bad influences, child protective service custody, and TYC, where he was physically abused. The jury found the enhancement paragraph true, and assessed sentence at 25 years in prison--10 years above the minimum and 74 years below the maximum.

**Held:** Affirmed

**Opinion:** The issues on appeal involve the interplay of the statutes concerning juvenile delinquency adjudication, probation, and punishment enhancement. The family code provides:

An adjudication under Section 54.03 that a child engaged in conduct that occurred on or after January 1, 1996, and that constitutes a felony offense resulting in commitment to the Texas Youth Commission under Section 54.04(d)(2), (d)(3), or (m) or 54.05(f) is a final felony conviction only for the purposes of Sections 12.42(a), (b), (c)(1), and (e), Penal Code.Tex. Fam.Code Ann. § 51.13(d) (West Supp.2008).

The limitation of the scope for which the adjudications are final felony convictions creates a seeming peculiarity in cases in which someone with a juvenile adjudication for a felony resulting in commitment to TYC (a “juvenile felony”) is later charged with a first-degree felony as an adult, and also seeks to be placed on probation. To be placed on probation, a defendant must take certain steps:

A defendant is eligible for community supervision under this section only if before the trial begins the defendant files a written sworn motion with the judge that the defendant has not previously been convicted of a felony in this or any other state, and the jury enters in the verdict a finding that the information in the defendant's motion is true. Tex.Code Crim. Proc. Ann art. 42.12, § 4(e) (West Supp.2008).

Because of the family code's limitation of the effect of juvenile felonies, a defendant with only a juvenile felony can apply for probation and truthfully aver that he has not previously been convicted of a felony. *See* Tex. Fam.Code Ann. § 51.13(d). However, the juvenile felony adjudication counts as a final felony conviction for purposes of sentence enhancement. *See id.* When a defendant convicted of a first-degree felony is shown at the punishment phase to have been "once before convicted of a felony," the standard 5-to-99-year punishment range [FN1] is enhanced to life or 15 to 99 years in prison. Tex. Penal Code Ann. § 12.42(c)(1) (West Supp.2008). A jury cannot recommend probation if it assesses a prison term of more than ten years. Tex.Code Crim. Proc. Ann. art. 42.12, § 4(d)(1) (West Supp.2008). Because a jury considering punishment for a first-degree felony conviction enhanced by a prior final felony conviction--including a juvenile felony--cannot assess a punishment of less than 15 years, that jury must assess a punishment of more than 10 years. Thus, although a prior juvenile felony conviction does not prevent a defendant from applying for probation, it prevents the jury from recommending probation when the new conviction is for a first-degree felony enhanced by the prior juvenile felony.

FN1. Tex. Penal Code Ann. §§ 12.32, 29.03(a)(2) (West 2003).

**Conclusion:** In light of the interplay of these statutes and the procedural sequence of events, we conclude that the trial court erred by refusing to allow Thompson to discuss probation at voir dire, but did not err by failing to charge the jury about probation. However, after a review of the evidence admitted, we conclude that the error regarding voir dire discussion was harmless. In addition, we are also of the view that--considering the evidence--even if failing to charge the jury about probation was error, any such error was harmless.

**MODIFICATION OF DISPOSITIONc**  
**A COMMITMENT TO RESIDENTIAL PLACEMENT 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,**

**DOES NOT RESTRICT THE COMMITMENT TO LESS THAN SIX (6) MONTHS.**

¶ 08-4-2. **In the Matter of M.A.H.**, MEMORANDUM, No. 13-07-426-CV, 2008 WL 3971351 (Tex.App.—Corpus Christi, 8/28/08).

**Facts:** M.A.H., a juvenile, pleaded true to the offense of indecency with a child by exposure 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.

**Held:** Affirmed

**Memorandum Opinion:** 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.

**Concurring Memorandum Opinion by Justice Yañez**

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

In their briefs and 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." [FN2] 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.

FN2. 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 [sic] proper facility. [FN3]

FN3. Emphasis added.

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.

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, [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 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 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.

**Conclusion:** 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.

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#### **PETITION AND SUMMONS— ALLOWING THE STATE TO AMEND THE PLEADING TO CORRECT THE MISSPELLING OF THE VICTIM'S NAME DID NOT PREJUDICE APPELLANT AND WAS NOT UNFAIR TO AP- PELLANT.**

¶ 08-4-3. **In the Matter of T.A.**, MEMORANDUM, No. 11-06-00342-CV, 2008 WL 4072394 (Tex.App.—Eastland, 9/4/08)

**Facts:** In his first issue on appeal, appellant argues that the trial court "committed structural error by showing clear bias towards the State by alerting the prosecution to a necessary trial amendment." The petition alleged six separate offenses of unauthorized use of a motor vehicle. One of the offenses alleged that appellant operated a "Blue Oldsmobile Cutlass, without the effective consent

of Raul Villafranco III., the owner thereof.” At trial, Paul Villafranco III testified that his blue Oldsmobile Cutlass was stolen from the parking lot of the store where he worked. Villafranco testified that the police department misspelled his name. The trial court stated, “You may want to amend. You have it alleged as Raul.” The State moved to strike the first name from the allegation. Appellant objected that the State should not be allowed to amend the pleading during trial. The trial court found that the Texas Rules of Civil Procedure allowed the amendment. Appellant contends that the trial court’s comment was a clear bias toward the State.

**Held:** Affirmed

**Memorandum Opinion:** Appellant argues that Tex.Code Crim. Proc. Ann. art. 28.10(b) (Vernon 2006) does not allow a trial amendment to the charging instrument after the trial commences when the defense objects. However, Tex.Fam.Code Ann. § 51.17 (Vernon Supp. 2007) states that the Texas Rules of Civil Procedure govern juvenile proceedings unless otherwise provided. Tex.R. Civ. P. 66 states that during trial:

[T]he court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the allowance of such amendment would prejudice him in maintaining his ... defense upon the merits.

The strict prohibition against amendment of pleadings in criminal cases is not applicable in juvenile proceedings. See *Carrillo v. State*, 480 S.W.2d 612, 615 (Tex. 1972); *In re G.A.T.*, 16 S.W.3d 818, 823 (Tex. App.—Houston [14th Dist.] 2000, pet. den’d). The State may only amend its petition at “such time, and under such circumstances, as to be basically fair to the minor.” *Carrillo*, 480 S.W.2d at 615; *In re G.A.T.*, 16 S.W.3d at 823. Allowing the State to amend the pleading to correct the misspelling of the victim’s name did not prejudice appellant and was not unfair to appellant.

Parties have a right to a fair and impartial trial. *Markowitz v. Markowitz*, 118 S.W.3d 82, 86 (Tex.App.—Houston [14th Dist.] 2003, pet. den’d); *Metzger v. Sebek*, 892 S.W.2d 20, 37 (Tex. App.—Houston [1st Dist.] 1994, writ denied). One of the fundamental components of a fair trial is a neutral and detached judge. *Ward v. Village of Monroeville*, 409 U.S. 57, 62 (1972); *Markowitz*, 118 S.W.3d at 86. A judge should act as neither an advocate nor as an adversary for any party. *Markowitz*, 118 S.W.3d at 86. “To reverse a judgment on the ground of improper conduct or comments of the judge, we must find (1) that judicial impropriety was in fact committed and (2) probable prejudice to the complaining party.” *Id.*

**Conclusion:** The trial court noted a typographical error in the pleadings and allowed the State to amend the pleadings as permitted by Rule 66. Appellant has not shown that the trial court was biased toward the State. Appellant’s first issue on appeal is overruled.

#### APPEALS—

**IN A JUVENILE APPEAL, APPELLATE COUNSEL MAY SUCCESSFULLY WITHDRAW AS COUNSEL AND INFORM THE COURT THAT APPELLANT’S APPEAL IN FRIVOLOUS BY MEETING THE REQUIREMENTS OF *ANDERS V. CALIFORNIA*.**

¶ 08-4-4. **In the Matter of K.M.**, MEMORANDUM, No. 2-07-389-CV, 2008 WL 4445544 (Tex.App.—Fort Worth, 10/2/08).

**Facts:** Appellant K.M. was adjudicated delinquent on October 1, 2007 for misdemeanor assault-bodily injury. He appealed from this judgment of delinquency. According to Appellant’s brief, Appellant’s disposition was deferred until December 2007, when he was placed on probation for one year. Appellant has not appealed from the disposition order, and neither the disposition order nor a record of the final disposition proceedings, if any, appears in the record on appeal.

Appellant’s court-appointed appellate counsel has filed a motion to withdraw as counsel and a brief in support of that motion. In the brief, counsel avers that, in his professional opinion, this appeal is frivolous. [FN2] Counsel’s brief and motion meet the requirements of *Anders v. California* [FN3] by presenting a professional evaluation of the record demonstrating why there are no reversible grounds on appeal and referencing any grounds that might arguably support the appeal. [FN4] This court provided Appellant and his mother the opportunity to file a pro se brief, but they have not done so. The State also did not file a brief. In our duties as a reviewing court, we must conduct an independent evaluation of the record to determine whether counsel is correct in determining that the appeal is frivolous. [FN5] Only then may we grant counsel’s motion to withdraw. [FN6]

FN2. See *In re D.A.S.*, 973 S.W.2d 296, 297 (Tex.1998) (orig.proceeding) (holding that *Anders* procedures apply to juvenile appeals).

FN3. 386 U.S. 738, 87 S.Ct. 1396 (1967).

FN4. See *Mays v. State*, 904 S.W.2d 920, 922-23 (Tex.App.-Fort Worth 1995, no pet.).

FN5. See *Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim.App.1991); *Mays*, 904 S.W.2d at 923.

FN6. See *Penson v. Ohio*, 488 U.S. 75, 83-84, 109 S.Ct. 346, 351- 52 (1988).

**Held:** Counsel's motion to withdraw is granted, trial court's judgment of delinquency affirmed.

**Opinion:** Our review of the record reveals no jurisdictional defects. The juvenile court has jurisdiction over a child who is alleged to have engaged in delinquent conduct. [FN7] Appellant and his trial counsel stipulated that Appellant was fifteen years old at the time of trial. [FN8] Appellant and his trial counsel also stipulated that he resides in Tarrant County.

FN7. *See* Tex. Fam.Code Ann. § 51.04(a) (Vernon 2002).

FN8. *See id.* § 51.02(2)(A) (stating a "child" is a person who is ten years of age or older but under seventeen years of age).

Our review of the record also shows that the petition to adjudicate is not defective and that it provided sufficient notice to Appellant. [FN9] Service in this case was also proper. [FN10]

FN9. *See id.* § 53.04(d) (setting forth requirements of petition to adjudicate); *In re A.B.*, 868 S.W.2d 938, 940-41 (Tex.App.-Fort Worth 1994, no writ) (discussing notice requirements for petition to adjudicate).

FN10. *See* Tex. Fam.Code Ann. § 53.06(a)(1) (Vernon 2002) (requiring that child be served with summons); *In re D.W.M.*, 562 S.W.2d 851, 852-53 (Tex.1978) (requiring that child be served with summons and that summons affirmatively appear in record).

Appellant's mother attended the hearing. [FN11] Appellant was represented by counsel from the date of the detention hearing through the date of the judgment of delinquency and also has counsel on appeal. [FN12] Additionally, Appellant's waivers of his rights comport with section 51.09 of the family code. [FN13]

FN11. *See* Tex. Fam.Code Ann. § 51.115(a) (Vernon 2002).

FN12. *See id.* § 51.10 (Vernon Supp.2008).

FN13. *See id.* § 51.09 (Vernon 2002).

The evidence is legally and factually sufficient to support adjudication. [FN14] Further, based on the record, Appellant would be unable to prove by a preponderance of the evidence that but for his trial counsel's errors, the result of the trial would have been different. [FN15]

FN14. *See In re J.D.P.*, 85 S.W.3d 420, 422 (Tex.App.—Fort Worth 2002, no pet.) (providing legal sufficiency standard); *In re B.P.H.*, 83 S.W.3d 400, 407 (Tex.App.—Fort Worth 2002, no pet.) (providing factual sufficiency standard).

FN15. *See Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984); *In re R.D.B.*, 102 S.W.3d 798, 800 (Tex.App.—Fort Worth 2003, no pet.).

**Conclusion:** Because our independent review of the record reveals no reversible error, we agree with counsel's professional determination that an appeal challenging adjudication would be frivolous. Accordingly, we grant counsel's motion to withdraw in this case and affirm the trial court's judgment of delinquency.

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**DEFENSES—  
STATE MAY PROSECUTE A JUVENILE FOR THE OFFENSE OF PROSTITUTION, EVEN THOUGH THE JUVENILE IS UNDERAGE AND CANNOT LEGALLY CONSENT TO SEX.**

¶ 08-4-5. **In the Matter of B.W.**, \_\_S.W.3d\_\_, No. 01-07-00274-CV, 2008 WL 4427680 (Tex.App.—Houston [1st Dist.] 10-2-08)

**Facts:** At appellant's adjudication hearing, the State, before appellant pleaded true to engaging in delinquent conduct, offered into evidence, without objection, a "Stipulation of Evidence," signed by appellant, in which she admitted that she had engaged in delinquent conduct by committing the offense of prostitution. After appellant pleaded true to engaging in the conduct, the State offered into evidence a juvenile probation report regarding appellant's history and the delinquent conduct.

In the report, Juvenile Probation Officer L. Sarfati stated that in November of 2004, appellant, when she was eleven years old, was placed into the custody of Child Protective Services ("C.P.S."). In October of 2005, appellant ran away from her group home facility, and, for the next fourteen months, C.P.S. did not know of her whereabouts.

However, on January 12, 2007, at approximately 10:45 a.m., when appellant was thirteen years old, Houston Police Department Officer Nieto, working undercover in an unmarked car, drove past appellant, and she waved him over. After Nieto stopped his car, appellant approached Nieto and told him that her name was "Cynthia." Nieto asked appellant "what's up," and appellant offered to give Nieto a "blow job" for \$20. After Nieto agreed, appellant entered Nieto's car, and he arrested her for the offense of prostitution.

After considering appellant's plea and the information in the report, the trial court found that appellant had engaged in delinquent conduct and was in need of rehabilitation. Appellant subsequently filed a motion for new trial in which she asserted that the State, as a matter of law, may not prosecute a juvenile for the offense of prostitution. The trial court denied appellant's motion, but granted her permission to appeal.

**Held:** Motion for Rehearing Denied, Original opinion affirmed

**Opinion:** In her three issues, appellant argues that, although the State may “technically” adjudicate a juvenile for an offense that it may bring against an adult, the State cannot legally adjudicate a juvenile as engaging in delinquent conduct by committing the offense of prostitution because “a child cannot [legally] consent to sex with an adult.” She asserts that adjudication of a juvenile for the offense of prostitution leads to an absurd result, violates due process of law, and “offends public policy notions that children [suffering] from sexual exploitation must be protected as victims.”

The construction to be given to a statute is a question of law. *State v. Vasilas*, 187 S.W.3d 486, 488 (Tex. Crim.App.2006). We begin with the plain language of a statute in order to discern its meaning. *Id.* When a statute does not define a word, we also give the word its plain meaning. *State v. Holcombe*, 187 S.W.3d 496, 500 (Tex. Crim.App.2006). In determining the plain meaning of a word, “we initially look to dictionary definitions.” *Id.* One of the narrow exceptions to giving a word its plain meaning is if doing so would lead to absurd results. *Boykin v. State*, 818 S.W.2d 782, 785-86 (Tex.Crim.App.1991).

The Texas Family Code provides that the juvenile justice courts have jurisdiction in “all cases involving ... delinquent conduct ... by a person who was a child.” Tex. Fam.Code Ann. § 51.04(a) (Vernon 2002). A “child” is a person who is ten years old or older and under seventeen years of age. *Id.* § 51.02(2) (Vernon Supp.2008). “Delinquent conduct” includes “conduct, other than a traffic offense, that violates a penal law of this state or of the United States punishable by imprisonment or by confinement in jail.” *Id.* § 51.03(a)(1) (Vernon Supp.2008).

A child may be found to have engaged in delinquent conduct only after an adjudication hearing. *Id.* § 54.03(a) (Vernon Supp.2008). If the trial court finds that the child engaged in delinquent conduct, the trial court may conduct a disposition hearing. *Id.* § 54.03(h) (Vernon Supp.2008). Disposition is synonymous with “‘sentencing[ ] and is used to honor the non-criminal character of the proceedings.’” “*In re K.T.*, 107 S.W.3d 65, 67 (Tex.App.-San Antonio 2003, no pet.) (quoting *In re C.S.*, 804 A.2d 307, 309 n. 2 (D.C.2002)). At the disposition hearing, “[n]o disposition may be made ... unless the child is in need of rehabilitation or the protection of the public or the protection of the child requires that disposition be made.” Tex. Fam.Code Ann. § 54.04(a), (c) (Vernon Supp.2008). If no such findings are made at the disposition hearing, “the [trial] court shall dismiss the child and enter a final judgment without any disposition.” *Id.* § 54.04(c). Moreover, the adjudication or disposition of a child generally does not constitute a criminal conviction. *Id.* § 51.13(a) (Vernon Supp.2008).

A “person” commits the offense of prostitution if the person “knowingly ... offers to engage, agrees to en-

gage, or engages in sexual conduct for a fee.” Tex. Penal Code Ann. § 43.02(a) (Vernon 2003). The offense of prostitution is punishable by confinement in jail. *See id.* §§ 12.22(2), 43.02(a) (Vernon 2003). Thus, a child who commits the offense of prostitution engages in delinquent conduct because prostitution is a penal offense that is punishable by confinement in jail. *See Tex. Fam.Code Ann.* § 51.03(a)(1); *Tex. Penal Code Ann.* §§ 12.22(2), 43.02(a)(1).

Here, appellant does not dispute the fact that she engaged in an act that constitutes the offense of prostitution. Nevertheless, she argues that, although, “[i]n 1973, the Texas Legislature applied [all of] the Texas Penal Code to [j]uveniles, making it a part of the Texas Family Code,” the State may not “prosecute” a juvenile for the offense of prostitution because the Texas Legislature could not have intended with “the blanket incorporation” of the Texas Penal Code into the Texas Family Code that a child could commit the offense of prostitution due to it leading to an “absurd result.”

We first note that appellant’s argument is based on a false premise. She, in fact, was not prosecuted for committing a crime. *See Tex. Fam.Code Ann.* § 51.13(a). Also, it does not lead to an absurd result to conclude that the plain meaning of delinquent conduct includes prostitution because the legislature defined delinquent conduct as “conduct ... that violates a penal law.” *See id.* § 51.03(a)(1). In fact, the legislature expressly excluded “a traffic offense” from the definition of delinquent conduct. *See id.* The legislature was free to exclude section 43.02 from the definition of delinquent conduct, but it did not do so. *See id.* Moreover, the legislature was also free to not define section 43.02 as applying to any “person,” but it also chose not to do so. *See Tex. Penal Code Ann.* § 43.02 (Vernon 2003).

Appellant next argues that the State may not “prosecute” a juvenile for the offense of prostitution because “[t]he statutory goals cannot be harmonized with the prosecution of a 13-year-old child for a prostitution charge,” asserting that, to do so, would “not only directly contradict[ ] the language and intent of these other protective statutes in the same chapter and section of the Code[,] but, it weakens them” and would also violate public policy. Appellant refers us to Texas Penal Code section 22.021, the offense of aggravated sexual assault, and Texas Penal Code section 43.05, the offense of compelling prostitution. *See id.* § 22.021 (Vernon Supp. 2008), § 43.05 (Vernon 2003). Intertwined with this argument, appellant asserts that, because “a child under fourteen cannot legally consent to sex,” “[i]t should follow that the legislature could not have intended that a 13-year-old child be prosecuted for an act for which the legislature has specifically provided that the child’s consent to the elements of the crime has no legal effect against the child.” Appellant relies upon section 43.02’s language which provides that appellant had to “offer[ ] to engage ... in sexual conduct for a fee” and, appellant, as a minor, could not make an “offer.”

The offense of aggravated sexual assault prohibits a “person” from intentionally or knowingly causing a wide array of sexual contact with a “child.” *Id.* § 22.021. A child is defined as “a person younger than 17 years of age who is not the spouse of the actor.” *Id.* §§ 22.011(c)(1), 22.021(b)(1) (Vernon Supp.2008). The offense of compelling prostitution prohibits a “person” from knowingly causing, “by any means[,] a person younger than 17 years to commit prostitution.” *Id.* § 43.05. Moreover, even if a child consents to sexual activity “in fact,” a child under the age of fourteen is incapable of granting legal consent to sexual conduct. *May v. State*, 919 S.W.2d 422, 424 (Tex.Crim.App.1996); *see* Tex. Penal Code Ann. § 22.021(a)(2)(B).

Appellant asserts that, if she “had begun performance of the act agreed to, the law mandates [that] she is the victim to be protected by the State and her consent, for whatever reason, to the sex act would not be a defense for the adult [who] exploit[ed]” her. However, appellant is an offender who was adjudicated for engaging in delinquent conduct by committing the offense of prostitution. In *P.G. v. State*, the Fourth Court of Appeals reasoned that a sixteen-year-old child could consent to engaging in delinquent conduct by sexually abusing another child:

[T]he focus of these penal statutes is on the victim and his ability to consent. The statutes evidence an intention to protect a child from anyone who commits a sexual assault on him with or without his consent. It would frustrate the intent of the statutes to hold that a child is protected from sexual abuse by adults, with or without his consent, but is not protected from sexual abuse by minors, with or without his consent. Children are entitled to no less protection from other children who sexually abuse them than they are from adults who sexually abuse them. 616 S.W.2d 635, 640-41 (Tex.Civ.App.—San Antonio 1981, writ ref’d n.r.e.).

Appellant correctly notes that the public policy behind consent statutes is to protect children from sexual exploitation as victims. *See id.* However, it does not logically follow that these statutes allow a child to engage in delinquent conduct without fear of adjudication. *See id.* In fact, appellant’s interpretation would undermine the intent behind these statutes, by encouraging the sexual exploitation of children, as it would “empower[ ] pimps to exploit children knowing that they will not be long removed from the streets because the [f]amily [c]ourt lacks jurisdiction.” *See In re C.S.*, 155 Misc.2d 1014, 591 N.Y.S.2d 691, 693 (N.Y.Fam.Ct.1992).

Appellant also argues that the State may not “prosecute” a juvenile for the offense of prostitution because Texas Penal Code section 43.05 “automatically [punishes] an adult who causes by any means a child to commit prostitution.” *See* Tex. Penal Code Ann. § 43.05.

In support of her argument, appellant relies upon *Waggoner v. State*, 897 S.W.2d 510 (Tex.App.-Austin 1995, no pet.). Without citing to any specific provision in *Waggoner*, appellant asserts that the court “may have recognized that [a] child cannot legally commit [the offense] of prostitution.”

The offense of compelling prostitution prohibits a “person” from knowingly causing, “by any means[,] a person younger than 17 years to commit prostitution.” Tex. Penal Code Ann. § 43.05. In *Waggoner*, the court simply interpreted the meaning of causing a child by “any means” to commit the offense of prostitution and did not consider the child’s potential guilt. 897 S.W.2d at 512-13; *see* Tex. Penal Code Ann. § 43.05. *Waggoner* did recognize, however, that section 43.05’s purpose is to protect minors from prostitution by prohibiting “ ‘conduct that exploits the immature,’ regardless of coercion.” 897 S.W.2d at 512 (quoting *State v. Wood*, 34 Or.App. 569, 579 P.2d 294, 296 (Or.Ct.App.1978)).

We agree that the obvious purpose of section 43.05 is to protect children from a specified evil, i.e., being caused by any means to commit the offense of prostitution. *See* Tex. Penal Code Ann. § 43.05. However, the statute does not protect a child from adjudication for engaging in delinquent conduct by committing the offense of prostitution. *See id.* As noted above, such an interpretation would undermine the statute’s intent to prevent a person from compelling a child into prostitution by allowing for children to engage in such conduct without consequence. *See C.S.*, 591 N.Y.S.2d at 693.

Appellant further argues that the State may not “prosecute” a juvenile for the offense of prostitution because a juvenile, “caused by any means to commit prostitution, is unequivocally immune from such prosecution under Texas Penal Code section 43.06” and, to do so, due to section 43.06’s asserted granting of immunity, is a violation of public policy. Section 43.06 provides, “A party to an offense *under this subchapter* may not be prosecuted for any offense about which he is required to furnish evidence or testify, and the evidence and testimony may not be used against the party in any adjudicatory proceeding except a prosecution for aggravated perjury.” Tex. Penal Code Ann. § 43.06(b) (Vernon 2003) (emphasis added). Section 43.06’s “subchapter” includes the offenses of prostitution, promotion of prostitution, aggravated promotion of prostitution, and compelling prostitution. *Id.* §§ 43.02-.05 (Vernon 2003).

Section 43.06 simply provides that a “party”—an adult or a child—is generally granted immunity if that person was “a party to an offense,” which is included in section 43.06’s subchapter, and is required to furnish evidence or testify. Tex. Penal Code Ann. § 43.06(b); *see Butterfield v. State*, 992 S.W.2d 448, 449-50 & n. 11 (Tex.Crim.App.1999). Section 43.06 does not provide that a child may not be adjudicated for engaging in delinquent conduct by committing the offense of prostitution. Moreover, here, section 43.06 is inapplicable be-

cause appellant was not “required to furnish evidence or testify.” *See* Tex. Penal Code Ann. § 43.06(b).

Finally, appellant argues that the State’s “prosecution” of her for the offense of prostitution violates due process of law because, after appellant ran away from C.P.S., the State did not investigate “where [a]ppellant was living for those 14 months,” appellant cannot legally consent to sex, appellant is immune, under section 43.06, to prosecution for the offense of prostitution, and appellant’s adjudication of guilt stigmatizes her.

In support of her argument that the State denied her due process of law, appellant relies upon *In re Gault*, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967) and *In re Winship*, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). In *Gault*, the United States Supreme Court held that a juvenile is entitled to proper notice of the charges against him, the right to counsel, the privilege against self-incrimination, and the right to confrontation in a juvenile delinquency adjudication proceeding. 387 U.S. at 33-34, 41, 55-56, 87 S.Ct. at 1446-47, 1451, 1458-59. In *Winship*, the United States Supreme Court held that, in a juvenile delinquency adjudication proceeding, the State must prove that a juvenile committed an offense by using the beyond a reasonable doubt standard. 397 U.S. at 368, 90 S.Ct. at 1075.

However, unlike in *Gault* and *Winship*, appellant does not allege, nor does the record show, that appellant was denied any of the applicable procedural requirements that due process of law requires for adjudicating a juvenile as engaging in delinquent conduct. Moreover, the United States Supreme Court in *Winship* did not hold that the State may never subject a juvenile to the stigma of a finding that the juvenile violated a criminal law, just that the State must follow applicable procedural requirements in adjudicating a juvenile’s guilt. *See id.* at 367, 90 S.Ct. at 1074.

Accordingly, we hold that a juvenile may be adjudicated for engaging in delinquent conduct by committing the offense of prostitution. *See* Tex. Fam.Code Ann. § 51.03(a)(1); Tex. Penal Code Ann. § 43.02(a). We further hold that the trial court’s adjudication of appellant for engaging in delinquent conduct by committing the offense of prostitution did not lead to an absurd result, violate due process of law, or offend public policy.

**Conclusion:** We overrule appellant’s three issues. We affirm the order of the trial court.

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**TEXAS YOUTH COMMISSION—  
THE THREE-YEAR MINIMUM TIME REQUIREMENT FOR A FIRST DEGREE FELONY CONCERNS A LIMITATION ON TYC’S POWER TO RELEASE, NOT A STATUTORY MINIMUM TIME REQUIREMENT TO STAY AT TYC.**

¶ 08-4-6. **In the Matter of J.B.C.**, MEMORANDUM, No. 2-07-431-CV, 2008 WL 4531701 (Tex.App.—Fort Worth, 10/9/08).

**Facts:** A jury found that J.B.C. engaged in delinquent conduct by committing murder. *See In re J.B.C.*, 233 S.W.3d 88, 94 (Tex.App.—Fort Worth 2007, pet. denied) (providing details concerning J.B.C.’s fatally shooting his maternal grandmother in the back of the head with a .32 caliber handgun and affirming trial court’s judgment). The trial court sentenced J.B.C. to forty years’ confinement with TYC with a possible transfer to TDCJ. *Id.* After J.B.C. turned eighteen years old and had spent approximately eighteen months in the custody of TYC, upon TYC’s request, the trial court held a hearing pursuant to section 54.11 of the family code and section 61.079(a) of the human resources code concerning the transfer of J.B.C. to TDCJ. *See* Tex. Fam.Code Ann. § 54.11 (Vernon Supp.2008); Tex. Hum. Res. Code Ann. § 61.079(a) (Vernon Supp.2008).

At the November 20, 2007 transfer hearing, the State presented the testimony of TYC court liaison Leonard Cucolo as well as TYC’s general file, master file, and security file on J.B.C. Cucolo testified that there are three categories by which J.B.C. was evaluated while at TYC—academics, behavior, and conduct. Cucolo said that although J.B.C. had progressed well in the area of academics, he had progressed poorly both behaviorally and in his conduct. Cucolo testified that J.B.C. had demonstrated “pretty serious behavior problems in the form of an assault or aggressive behavior towards staff and students.” Cucolo said that J.B.C. had been confined to the security unit multiple times for being a danger to others. He also said that J.B.C. had a pattern of being disrespectful and verbally aggressive toward staff and students and failed to follow instructions from TYC staff. In all, Cucolo testified that J.B.C. had roughly seventy documented incidents of misconduct or referrals to TYC’s security unit. Eighteen of these referrals resulted in his removal from TYC’s dorm.

Cucolo also detailed a few of the incidents that led to J.B.C.’s removal to TYC’s security unit. One such incident involved J.B.C. “hitting his peer with a closed fist continuously” while yelling out, “White Power.” Cucolo stated that J.B.C.’s reference to “White Power” was “gang-related.” Cucolo also said that J.B.C. had received a variety of services at TYC, including pharmacological intervention, psychiatric counseling, medication for anxiety, individual counseling, group counseling, and staff counseling. Cucolo said that despite these services, J.B.C. was generally disruptive and tended to blame others for his behavioral problems. In sum, Cucolo said that J.B.C. demonstrated an inability to progress in his re-socialization program.

Jeannette Saha, a case manager for TYC who knew and had worked with J.B.C., also testified. She too stated that J.B.C. had progressed well academically. Saha also stated that she believed J.B.C. had progressed both

behaviorally and in his conduct. Saha said that she believed J.B.C. benefited from being at TYC and that she believed specialized treatment would be of significant benefit to him.

Following closing arguments, the court took the case under advisement to review the documentary evidence. After reviewing the written evidence, the trial court advised J.B.C. of his appellate rights and ordered that J.B.C. be transferred to TDCJ to complete his forty-year sentence. This appeal followed.

**Held:** Affirmed

**Memorandum Opinion:** In part of his sole issue, J.B.C. complains that the trial court abused its discretion by ordering him transferred to TDCJ when he had only served roughly half of his three-year minimum time requirement at TYC. We disagree.

The three-year minimum time requirement discussed at the transfer hearing concerns a limitation on TYC's power to release J.B.C. on parole, rather than a statutory minimum time requirement that J.B.C. was to stay at TYC. *See* Tex. Hum. Res. Code Ann. § 61.081 (Vernon Supp.2008) (providing TYC "may not release the child under supervision without approval of the juvenile court ... unless ... the child has served at least ... 3 years, if the child was sentenced to commitment for conduct constituting ... a felony of the first degree."). In this case, the minimum time before recommending a transfer from TYC to TDCJ was six months. *See* 37 Tex. Admin. Code § 85.65(e)(2)(B) (2006) (providing that TYC may request a juvenile court hearing for transfer to TDCJ for sentenced offenders who have been convicted of a felony offense and have spent at least six months in a high restriction facility).

**Conclusion:** Here, it is uncontested that J.B.C. spent more than six months in a high-restriction facility prior to TYC's request that he be transferred to TDCJ. We overrule this part of J.B.C.'s sole issue.

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**APPEALS—  
COMPLAINT THAT A TYC COMMITMENT IS UNJUSTIFIED, UNREASONABLE, INAPPROPRIATE AND DISPROPORTIONATE TO THE SERIOUSNESS OF THE ALLEGED VIOLATION OF PROBATION, IS WAIVED IF NOT MADE EITHER AT THE TIME OF THE HEARING OR BY ANY POST-TRIAL MOTION.**

¶ 08-4-7. **In the Matter of J.C.L.**, MEMORANDUM, No. 13-08-379-CV, 2008 WL 4742006, (Tex.App.—Corpus Christi, 10/30/08).

**Facts:** J.C.L. was placed on juvenile probation on June 6, 2007 for delivery or offer of delivery of a dangerous drug, a state jail felony. *See* Tex. Health & Safety Code Ann. § 483.042(a), (d) (Vernon 2003). On three subsequent occasions, the court found that J.C.L. had violated her probation. Each time, the court modified her probationary terms and increased the sanction level. On April 24, 2008, J.C.L. was unsuccessfully discharged from the Taylor County Post Adjudication Facility—a violation of her probation. Thereafter, the State filed a motion to modify J.C.L.'s probation. At the hearing on the motion to modify, J.C.L. entered a plea of "true" to the allegations that she violated her conditions of probation. The trial court terminated her probation and sentenced her to an indefinite term in TYC until discharge or no later than her nineteenth birthday.

**Held:** Affirmed

**Memorandum Opinion:** By her sole issue, J.C.L. complains the trial court's order of termination and sentence to TYC is unjustified, unreasonable, inappropriate and disproportionate to the seriousness of the alleged violation of a term and condition of her juvenile probation, in violation of the Eighth and Fourteenth Amendments of the United States Constitution. *See* U.S. Const. amends. VIII and XIV. The record, however, reflects that no objection was made to the sentence either at the time of the hearing or by any post-trial motion. By failing to object, J.C.L. has waived any complaint on appeal. *Trevino v. State*, 174 S.W.3d 925, 927-29 (Tex.App.—Corpus Christi 2005, pet. ref'd).

Even if the issue had been preserved, however, the punishment assessed was within the limits prescribed by statute. *See* Tex. Fam.Code. Ann. § 54.05(f) (Vernon 2007). Generally, punishment that falls within the limits prescribed by statute is not excessive, cruel, or unusual. *See* *Samuel v. State*, 477 S.W.2d 611, 614 (Tex.Crim. App.1972); *Trevino*, 174 S.W.3d at 928.

**Conclusion:** Having found that no error has been presented for review, we affirm the trial court's judgment.