

Juveniles Who Engage in Sexually Offending Behavior

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PART 1: OUTCRY HEARINGS

Outcry Hearings – TFC Sec. 54.031

- In a nutshell, TFC Sec. 54.031 allows admission of the 1st statements about the abuse that a child <18 or a person w/ a disability makes about the offense to a person 18 years or older.
- Important to know the statute was amended effective 9/1/2025
- TFC Sec. 54.031. Hearsay Statement of Certain Abuse Victims, is the Juvenile Justice System's equivalent to CCP art. 38.072, of the same name.

Outcry Hearings – TFC Sec. 54.031

- As such, the appellate courts reviewing juvenile appeals will look to case law regarding CCP 38.072 in adult cases.
- The Supreme Court of Texas, in *In the Matter of Z.L.B.*, 102 S.W.3d 120, (2003), stated “We are persuaded that the outcry statute should be interpreted no differently in a juvenile trial than in an adult criminal trial.”

The Law: TFC Sec. 54.031(a)

(a) This Section applies to a hearing under this title in which a child is alleged to be a delinquent child on the basis of a violation of any of the following provisions of the Penal Code, if a child 18 years of age or younger or a person with a disability is the alleged victim of the violation:

- (1) Chapter 21 (Sexual Offenses) or 22 (Assaultive Offenses);
- (2) Section 25.02 (Prohibited Sexual Conduct);
- (3) Section 43.25 (Sexual Performance by a Child); or
- (4) Section 20A.02(a)(7) or (8) (Trafficking of Persons); or
- (5) Section 43.05(a)(2) (Compelling Prostitution).

The Law: TFC Sec. 54.031(b)

(b) This Section applies only to statements that describe the alleged violation that:

- (1) were made by the child or person with a disability who is the alleged victim of the violation; and
- (2) were made to the first person, 18 years of age or older, to whom the child or person with a disability made a statement about the violation.

The Law: TFC Sec. 54.031(c)(1)

(c) A statement that meets the requirements of Subsection (b) is not inadmissible because of the hearsay rule if:

(1) on or before the 14th day before the date of the hearing begins, the party intending to offer the statement:

(A) notifies each other party of its intention to do so;

(B) provides each other party with the name of the witness through whom it intends to offer the statement; and

(C) provides each other party with a written summary of the statement;

The Law: TFC Sec. 54.031(c) & (d)

(2) the juvenile court finds, in a hearing conducted outside the presence of the jury, that the statement is reliable based on the time, content, and circumstances of the statement; and

(3) the child or person with a disability who is the alleged victim testifies or is available to testify at the hearing in court or in any other manner provided by law.

(d) In this section, “person with a disability” has the same meaning as “disabled individual” as defined by Section 22.04, Penal Code.

September 1, 2025 Amendments

SO WHAT CHANGED ON 9/1/2025?

1. SB 1019 raised the age of eligibility for child victims from 12 years old or younger to 18 or younger to better align with CCP art. 38.072.
2. The definition of “person with a disability” was aligned w/ the definition of “disabled individual” in 22.04 TPC.

***This procedural change applies to a juvenile case **commencing** on or after 9/1/2025, regardless of when the offense is alleged to have occurred. Cases that commenced before 9/1/2025 are governed by previous statute.

Practical Tips

Section (a):

- The child was 17 or younger **at the time the offense was committed**, not at the time of trial (*see Marquez v. State*, 165 S.W.3d 741 (Tex.App. – San Antonio 2005, pet. Ref'd.))
- Doesn't apply to victims who were over 18 at the time of the offense and don't qualify as a person with a disability; but can apply to victims over 18 who qualify as a person with a disability
- Applies only to the enumerated list so does not apply to homicides or kidnappings

Practical Tips

Section (b):

- Outcry witness must be 18 or older, so friends, schoolmates, siblings & other relatives <18 don't qualify, but these witnesses may still be able to testify to the victim's statements if they fall under another hearsay exception, such as excited utterance or a prior consistent statement, or they may be able to testify about victim's actions, behavior and demeanor during the disclosure. *See In the Matter of M.A.M., UNPUBLISHED, No. 06-05-00103-CV, 2006 Tex.App.Lexis 3826 (Tex.App. – Texarkana 2006, no pet.).*

Practical Tips

Section (b):

- Appellate courts have recognized that child victims often disclose sexual abuse incrementally, bit by bit, to a series of different adults at different times. In *Garcia v. State*, 792 S.W.2d 88, 91 (Tex. Crim. App. 1990), the Court of Criminal Appeals held that outcry is not “any statement that arguably relates to what later evolves into an allegation of child abuse...The statute demands more than a general allusion of sexual abuse.”
- The State will often give outcry notice for all the possible candidates & make a final determination at trial.
- Ultimately, the trial court has broad discretion in admitting outcry witness testimony. (*See Garcia*); *see also In re J.G.*, 195 S.W.3d 161, (Tex.App. – San Antonio 2006)

Practical Tips

Section (b) cont'd:

- *See Foreman v. State*, 995 S.W.2d 854 (Tex. App. – Austin 1999, pet. ref'd) for a recitation of a long line of cases that have followed *Garcia*.
- *See also Klein v. State*, 191 S.W.3d 766 (Tex. App. – Fort Worth 2006, pet. ref'd); *Brown v. State*, 189 S.W.3d 382 (Tex. App. Texarkana 2006, pet. ref'd); *Thomas v. State*, 309 S.W.3d 576 (Tex.App. – Houston [14th Dist.] 2010, no pet.); *Reyes v. State*, 274 S.W.3d 724 (Tex. App. – San Antonio 2008, pet. ref'd); *In the Matter of Z.L.B.*, 102 S.W.3d 120 (Tex.2003); and *In the Matter of M.A.C.*, 339 S.W.3d 161 (Tex.App. – Eastland 2011, no pet.).

Practical Tips

Section (b) cont'd:

- What if the outcry witness is uncooperative or does not remember? Foreman also addressed this issue. The Austin COA held that “We interpret the statute to mean that the ‘first person’ refers to the first adult who can remember and relate at trial the child’s statement that in some discernible manner describes the alleged offense.” *Foreman* 995 S.W.2d at 859.
- If the outcry witness is not willing and able to testify as to the victim’s statements, the state can designate the next person to whom the victim spoke to as the outcry witness.

Practical Tips

Section (c):

State must notify defense in writing at least 14 days prior to the trial, but what happens if State doesn't meet minimum notice?

- Failure to give notice or comply w/ all provisions of statute is subject to a harm analysis where defense must show actual surprise and prejudice in order to win a reversal. *See Gabriel v. State*, 973 S.W.2d 715 (Tex.App. – Waco 1998, no pet.).
- *See e.g., Zarco v. State*, 210 S.W.3d 816 (Tex.App. – Houston [14th Dist.] 2006, no pet.) (State gave timely notice but changed its designation of outcry witness less than 14 days before trial began; but no surprise therefore no harm); *Fetterolf v. State*, 782 S.W.2d 927 (Tex.App. – Houston [14th Dist.] 1989, pet. ref'd) (b/c no evidence that defense attorney was surprised by outcry testimony at trial, outcry notice provided 1 day before trial did not prejudice defense's case); *Upton v. State*, 894 S.W.2d 426 (Tex.App. – Amarillo 1995) (allowing testimony where State served notice on the day of trial b/c defense had reviewed the State's file & knew the identity of the potential outcry witnesses).

Practical Tips

Section (c) cont'd:

What constitutes an appropriate “written summary” for purposes of (c)(1)(C)?

- A true summary containing only the main points is sufficient, but it should not be so condensed that it sounds like the bare-bones language of the charging instrument.
- *See e.g., Biggs v. State*, 921 S.W.2d 282 (Tex.App. – Houston [1st Dist.] 1995, pet. ref'd)(outcry notice deemed insufficient but error deemed harmless); *Davidson v. State*, 80 S.W.3d 132 (Tex.App. – Texarkana 2002, pet. ref'd (court's error in admitting the outcry witness's objected-to testimony, which was beyond the scope of the summary, was harmless); *Gay v. State*, 981 S.W.2d 864 (Tex.App. – Houston [1st Dist.] 1998, pet. ref'd (reversing conviction b/c outcry notice insufficient for failure to state an offense).

Practical Tips

Section (c)(2), The Outcry Hearing:

- This section states that a Sec. 54.031 hearing is mandatory for a statement to be admissible over a hearsay objection. The State should request a hearing even if the defense does not as failure to hold the hearing is error and subject to harm analysis on appeal. *See e.g., In the Matter of C.E.B., UNPUBLISHED, No. 09-04-128 CV, 2005 Tex.App.Lexis 5021 (Tex.App. – Beaumont 2005); In the Matter of A.W.B., UNPUBLISHED, No. 07-08-0345-CV, 2010 WL 364250 (Tex.App. – Amarillo 2010).*
- The hearing can be as simple as a bench conference prior to presenting the testimony of the outcry witness to the jury or can be a testimonial hearing.
- The statute does not require a judge to make any written findings of fact about the reliability of the statement, but they don't hurt.

Practical Tips

Section (c)(2), The Outcry Hearing cont'd:

- The statute does NOT require the child to testify in the hearing.
- The court can limit cross-examination by the defense if questions are outside the scope of the hearing. *See Broderick vs. State*, 89 S.W.3d 696 (Tex.App. – Houston [1st Dist.] 2002, pet. ref'd)
- The purpose of the hearing is not to determine whether the complainant is credible or not, no corroborating evidence is required, only issue at hearing is the reliability of the outcry statement itself. *See Hollinger v. State*, 911 S.W.2d 35 (Tex. App. – Tyler 1995, pet. ref'd).

Practical Tips

Section (c)(2), The Outcry Hearing cont'd:

- The statute requires courts to look at: “the time the child’s statement was made to the outcry witness, the content of the child’s statement, and the circumstances surrounding the making of that statement.” *Broderick*, 89 S.W.3d at 699 (quoting *MacGilfrey v. State*, 52 S.W.3d 918, 921 (Tex.App. – Beaumont 2001, no pet.)). *See also A.R.S. v. State*, COA, Houston [14th Dist.], UNPUBLISHED, 2001 WL 930806; *In re V.B.*, COA, San Antonio, UNPUBLISHED, 2005 WL 418710.
- For specific factors the court may consider in making the determination, *See e.g., Walker v. State*, 461 S.W.3d 599, 609-10 (Tex.App. Houston [1st Dist.] 2015, no pet.); *Buckley v. State*, 758 S.W.2d, 339, 343 (Tex.App. – Texarkana 1988), *aff’d*, 786 S.W.2d 357 (Tex.Crim.App. 1990).

Practical Tips

Section (c)(3), Availability of the alleged victim:

- The last requirement is that the victim testifies or is available to testify at trial in court or in any other manner provided by law.
- “Any other manner” presumably refers to closed circuit television testimony under CCP art. 38.071.
- The requirement of availability under TFC Sec. 54.031 has no bearing on the CCTV determination of unavailability under CCP art. 38.071 because of CCP Art. 38.071(8)(b).
- If both CCTV and an outcry statement are being admitted in a trial case, make sure to make the availability or unavailability findings on the record for each.

PART 2: EXTRANEIOUS OFFENSES

Relevant Statutes

The Usual:

- TRE 404(b) – Crimes, Wrongs, or Other Acts
- TRE 609 – Impeachment by Criminal Conviction
- CCP art. 37.07 – Evidence of Prior Criminal Record
- The usuals require “reasonable” notice from State, where 10 days has been found to be presumptively reasonable.

Additionally for Child Abuse cases:

- CCP art. 38.37
- Requires a 30-day notice from State

CCP art. 38.37 EVIDENCE OF EXTRANEIOUS OFFENSE OR ACTS

SECTION 1 – Applies to victim in listed offenses

- Evidence of other crimes, wrongs, or acts committed by Defendant is admissible in case-in-chief.
- Shall be admitted (i.e., NO HEARING NEEDED)
- Goes to state of mind of defendant and to show relationship of defendant and child.
- Either party can request a limiting instruction for the jury, then Judge shall provide orally, when evidence admitted, and in writing in the jury instructions

CCP art. 38.37 EVIDENCE OF EXTRANEIOUS OFFENSE OR ACTS

SECTION 2 – Applies to extraneous victims in listed offenses

- Evidence that defendant has committed a separate offense is admissible in case-in-chief.
- Goes to show character of defendant and acts in conformity with his character.
- Must have a hearing outside presence of jury and determine that the evidence is adequate to support a finding beyond a reasonable doubt that the extraneous offense occurred.
- Jury Charge: Sec. 1 language is different than Sec. 2 language

CCP art. 38.37 EVIDENCE OF EXTRANEIOUS OFFENSE OR ACTS

SECTION 3 – State must provide notice of intent to use this evidence at least 30 days before trial.

SECTION 4 – The statute does not limit admissibility of extraneous crimes, wrongs, or bad acts under any other laws.

This article is important in child sexual abuse cases b/c the defendant has often committed multiple offenses against the child victim or possibly multiple child victims.

CCP art. 38.37 EVIDENCE OF EXTRANEIOUS OFFENSE OR ACTS

CCP art. 38.37 does not specify how much info must be included in the notice & no case law directly on point, but can look to CCP art. 37.07 (concerning extraneous crimes & bad acts) as it does set out minimum requirements & has large body of appellate case law.

In giving notice under CCP art. 37.07, State must provide: (1) the name of the offense, (2) the date of the offense, (3) the county where offense occurred, and (4) the name of the alleged victim. See Tex. CCP art. 37.07(3)(g).

PART 3: DEFENDING JUVENILE SEX CASES

SI.COM
MAY 21, 2018
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Sports Illustrated

THERE ARE TWO LUKE HEIMLICH TO CONSIDER...



THE FIRST is the Luke who admitted to committing the most abhorrent of crimes in his youth, a teenage sex offender who has paid his societal debt and thought his case would never become public.

THE SECOND Luke wants this on the record: "I pled guilty. But ever since that day and even before that, in court records and everything, I've denied ever committing the offense. I stand by that."

Luke Heimlich is one of the country's best college pitchers, a first-round draft pick if judged on talent alone. Will major league teams reconcile the two Lukes, as Oregon State has? Should they even try?

This is a story about crime and punishment and the meaning of second chances.

THIS IS A SPORTS STORY WITH NO EASY ANSWERS

BY S.L. PRICE P. 30
Photograph by JOHN W. MCCOONOUGH



Defending Juvenile Sex Cases

Difficult Subject Matter

Lifelong Stigma

Luke Heimlich

Registration Consequences

Preparing for a Juvenile Sex Case

Detention

Pre-trial Issues

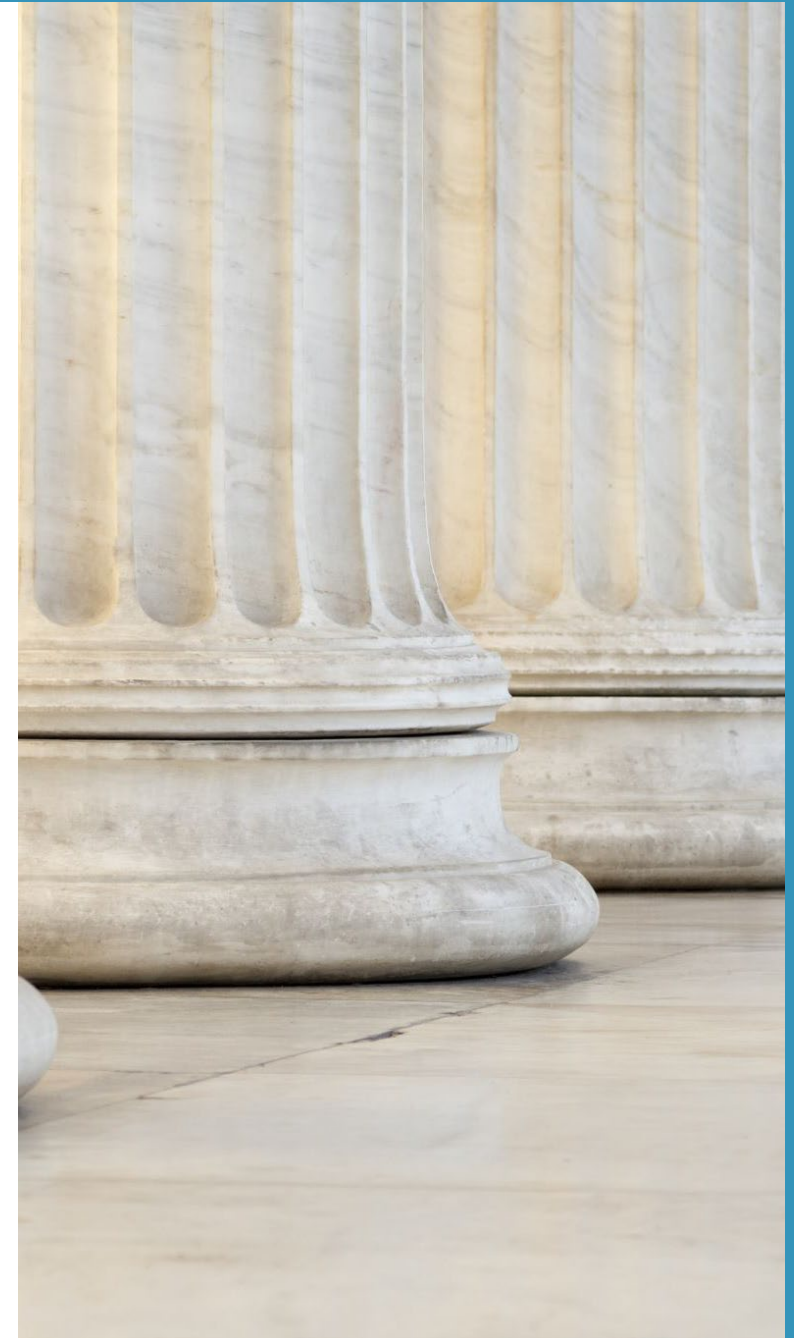
The Respondent Child

Expert Witnesses

Discovery

Mitigation and Disposition

- Juveniles are Different
- Supreme Court Case Law



Sex Offender Registration

Public

Private

Deferred

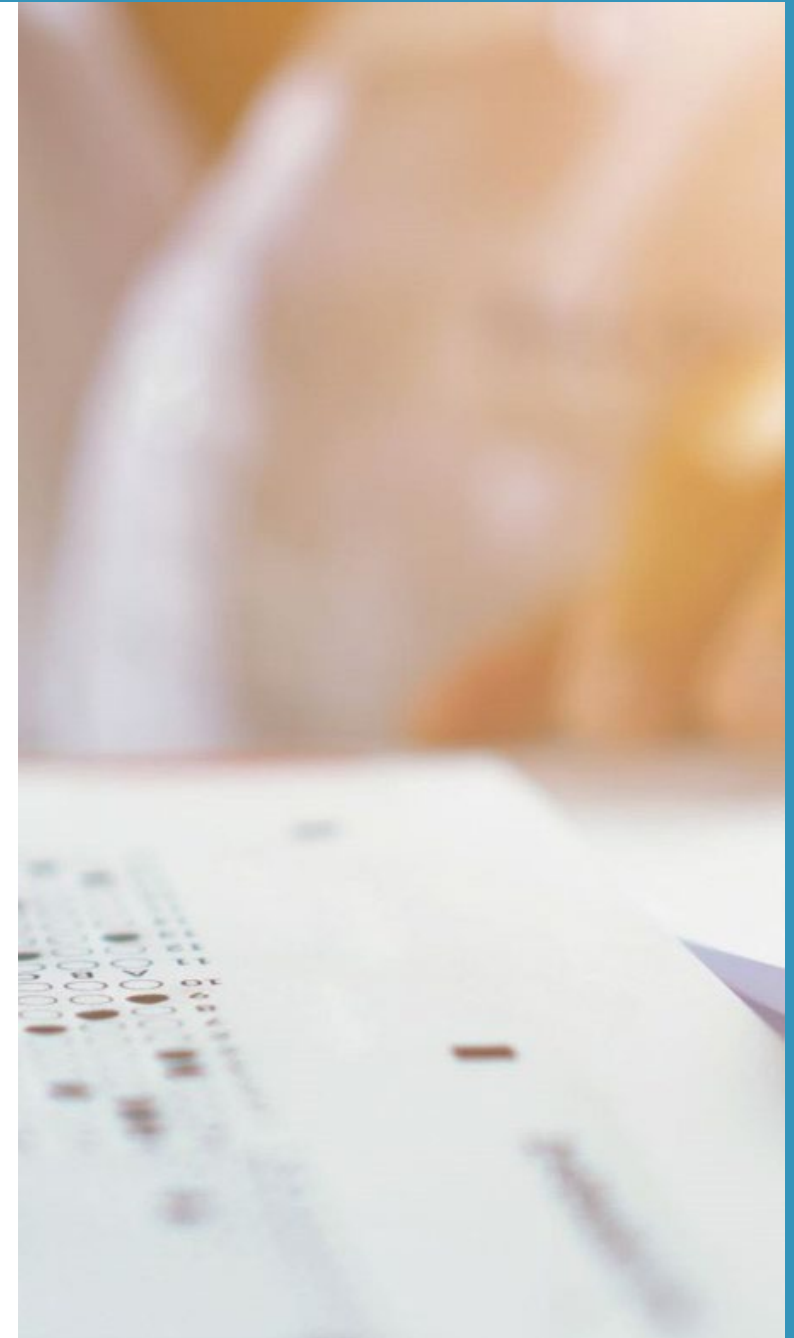
Notification to Schools

Article 15.27(a) Code of Criminal Procedure

- All felonies and some misdemeanors
i.e., unlawful restraint; indecent
exposure

Article 15.27(b)

- Adjudication or Deferred Prosecution
Notice



Case Law Notes

- It was error for trial court to refuse to allow thirteen year old to withdraw his plea of true because the thirteen year old had not been informed of the potential defense of lack of capacity to consent to sex as a matter of law. *In the Matter of R.R.S.* Tex.App.—El Paso, 8/25/2017 (with dissent) REVERSED
- See *In re B.W.**

Post Disposition Representation

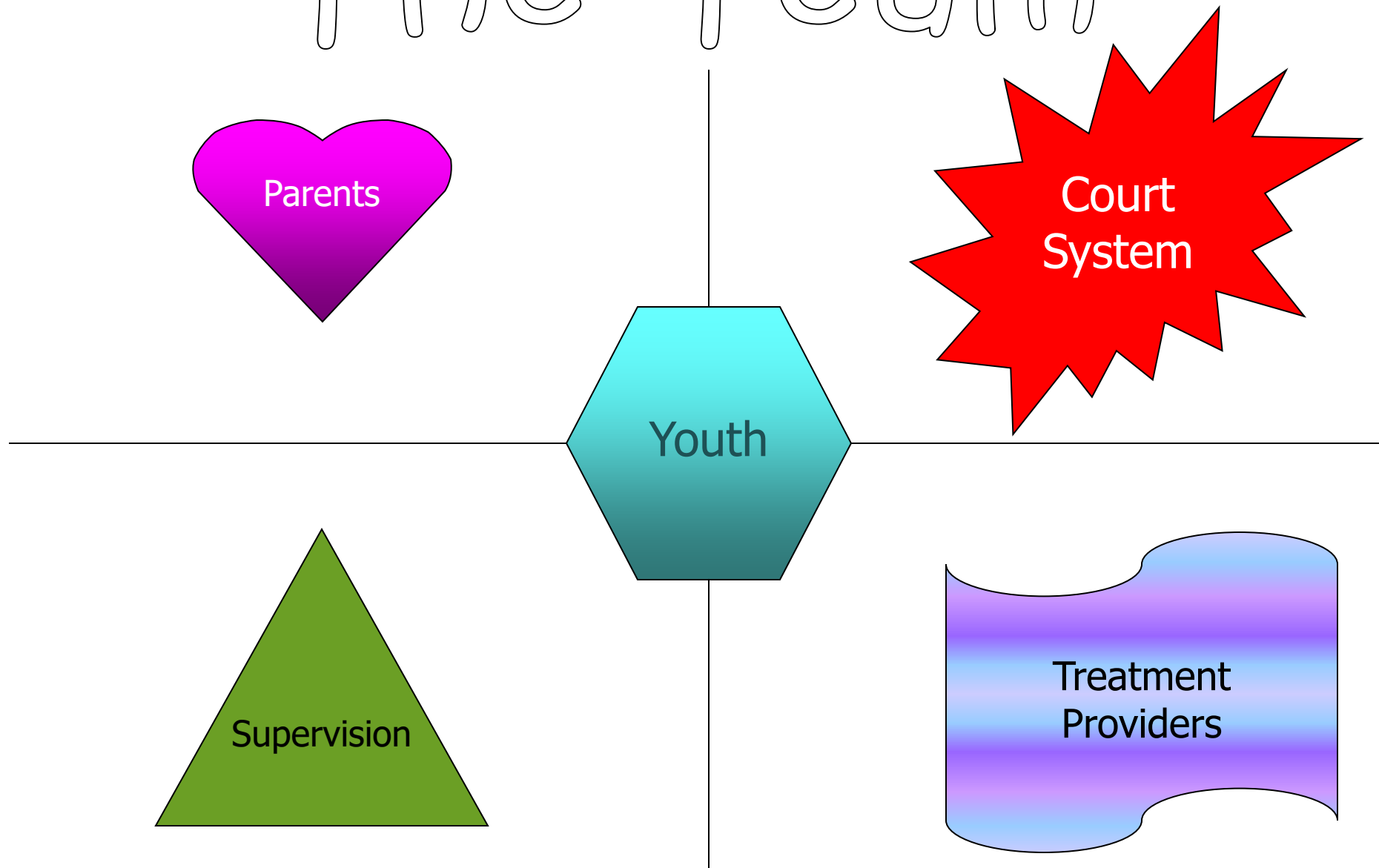
- Continuing representation through sealing
- Work with probation officers & treatment providers
- Monitor confidentiality & polygraph policies
- Advise clients on collateral consequences and pursuing sealing
- Providing guides for child registrants

PART 4: TREATMENT

A holistic approach to working with youth
who commit offenses.

Changing the life patterns of the Juvenile who
commits offenses.

The Team



How does the team work together so well?

Emphasis on Relationships

- Youth
- Parent
- Therapist
- Juvenile/Court Staff

Relationships with Youth

- Treat youth with respect and care
- Understand that they can (and do) get better
- Teach youth that his world is trustable
- Empower youth to build healthy relationships
- Teach youth to “Be Nice and Don’t Lie”

Parent

- Family change/ supervision techniques developed without stress of youth being in the home - able to work with parent without the daily stress of living with the youth while parent is learning
- Impetus to work harder on issues so youth may return home
- Work in family to develop trust - spend time building team concept with parent

Staff Relationships

- These relationships are important to all involved and we all know it
- Breakfast at in-patient staffings
- Lunch at out-patient staffings
- Discussions about differing opinions- all have input, all care about the child, all have same goal
- Expect to learn from one another
- Expect for our minds to be changed, open to all and differing opinions
- All professionals are trained in understanding of youthful offenders and the concepts involved

Population and myths about youth who commit offenses

- Age range from 10-17
- Demographic background
- Educational abilities cover gamut
- Family systems are diverse as well
- Sexual abuse is not perpetrated by strangers most of the time
- Kids with sexual behavior problems do not grow up to be adult offenders with proper treatment
- Most victims love the person who abused them/ want them to get better
- 2 factors determine whether a victim of sexual abuse will have a positive outcome:
 - Were they believed and protected?
 - Did the person whom they love who abused them make amends?

Qualifications for Youth (Inpatient vs. Outpatient)

- Risk level
- Age of youth
- Penetration
- Significant age difference
- Level of force/coercion
- Level of family functioning
- Level of social functioning
- Level of denial

Treatment Expectations

- Youth is placed on probation for 2 years
- Expected to complete Inpatient and Outpatient treatment in that time
- Must pass instant offense, sexual history, and monitoring polygraphs during that time
- Parents **MUST** be involved in treatment
- Recommendation for **no registration** if program is successfully completed

What we discover about youth in treatment

- 90% have more victims
- Average victim age is 6
- Average number of victims is 7
- Severe sexual acting out in history
- 50% have victims 5 and younger who did not disclose abuse
- The last issue disclosed is the youth's own abuse
- Use of porn began at age 8 on average

Additional Considerations...

- It is important for these youth to have consequences
- Expedite cases for 16-year-olds
- It is hurtful to give wrong information
- Delaying cases delays treatment/ healing
- It is hurtful to scare the youth and family in terms of the program
- It's helpful to be informed about program and see it in action
- Treatment options for older youth (16+)

5 Components of JSO Treatment

- Relapse Prevention
- Victim Empathy
- Healthy Social Skills
- Healthy Sexual Relationships
- Supervision

Post Adjudication Treatment

- Kids are involved in a plethora of healthy activities
- Key concept of remaining “sober” from pornography for a longer period of time than they can achieve on their own, given the social pressures
- Participate in MRT- Moral Reconciliation Therapy
- Trauma Therapy
- Recognize offense triggers
- Family treatment to address familial issues in offense patterns

Social Skills Treatment

- Many kids have not participated in healthy social interactions in many years.
- Work outs are an important part of overall health as well as assessment of youth's ability to control impulses.
- Conflict resolution
- Problem solving
- Working through social struggles with peers and authority

Empathy Based Treatment

- Many kids have not been taught nor shown how to care for others
- Treatment of others and understanding impact on others is assessed continually
- Experiential exercises to elevate emotional reactions when appropriate
- Self disclosure in terms of personal trauma and sharing of traumatic events
- Tie personal trauma to harm to others

Trauma Informed Care

- Understanding trauma's impact on kids and others
- Specific focus on family violence and the effect on children
- Attention to sexual violence and witnessing of sexual violence either live or via screen
- Emotional regulation/changes in emotional regulation
- Reconnection and self acceptance
- Safety and stabilization

Family of Origin Issues

- Genograms
- Identify recurring patterns in families
- Family therapy to improve communication within families
- Address parenting issues with parents
- Confront parental maltreatment of youth

Relapse Prevention

- Development of physical safety plan
- Development of emotional safety plan
- Identification of cognitive distortion
- Ability to control behavior/impulses
- Ability to comply with community, as well as probation requirements
- Identification of offense cycle

Victim Empathy

- Demonstration of understanding the impact of the sexual abuse on the victim
- Ability to take full responsibility for their behavior and understanding their impact on victims
- Ability to enable environmental, as well as cognitive role in sexual abuse
- Affective demonstration of empathy

Development of Healthy Social Skills

- Development of appropriate peer relationships
- Development of ability to comply with authority figures
- Academic and behavioral achievement at school level
- Participation in adult supervised peer related structured activities

Development of Healthy Sexual Relationships

- Understanding of the laws pertaining to sexual activity
- Understanding of appropriate sexual boundaries
- Ability to identify both appropriate and deviant sexual fantasies

Supervision

- Development of internal controls of the juvenile
- Parental demonstration of the ability to identify relapse prevention/ program concepts
- Parental ability to supervise juvenile and parent(s) to work in tandem with juvenile probation officer/staff
- Parents required to attend weekly parent group

2026 JCJJ

presented by



SUPREME COURT OF TEXAS PERMANENT JUDICIAL
COMMISSION FOR CHILDREN, YOUTH AND FAMILIES

Thank you!