

# **TEXAS DEPARTMENT OF PUBLIC SAFETY**

**INTELLIGENCE & COUNTERTERRORISM DIVISION  
MISSING PERSONS CLEARINGHOUSE  
UNIDENTIFIED PERSONS/DNA UNIT**

## **STATE AND FEDERAL MISSING AND UNIDENTIFIED PERSONS STATUTES**



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**ISSUED BY THE  
TEXAS DEPARTMENT OF PUBLIC SAFETY  
AUSTIN, TEXAS**



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## **INTELLIGENCE & COUNTERTERRORISM DIVISION MISSING PERSONS CLEARINGHOUSE UNIDENTIFIED PERSONS / DNA UNIT**

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This publication is a reference guide for law enforcement and citizens to familiarize themselves with state and federal laws pertaining to missing and unidentified persons. These laws will provide information on statutes relating to abductions, endangered missing, disabled missing, runaways, custody orders, unidentified persons and other areas of frequent inquiry.

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# INTRODUCTION

## NCIC DEFINITIONS: MISSING PERSONS CATEGORIES

A missing person report may be entered using one of the following categories:

1. **DISABILITY:** a person of any age who is missing and under proven physical/mental disability or is senile, thereby subjecting him/herself or others to personal and immediate danger.
2. **ENDANGERED:** a person of any age who is missing under circumstances indicating that his/her physical safety may be in danger.
3. **INVOLUNTARY:** a person of any age who is missing under circumstances indicating that the disappearance may not have been voluntary, i.e., abduction, or kidnapping.
4. **JUVENILE:** a person under the age of 21 who is missing and does not meet any of the entry criteria set forth in 1, 2, 3, or 5.
5. **CATASTROPHE VICTIM:** a person of any age who is missing after a catastrophe.
6. **OTHER:** a person over the age of 21 not meeting the criteria for entry in any other category who is missing and for whom there is reasonable concern for his/her safety (NCIC 2000 format only).

Source: NCIC Operations Manual 2000

## UNIDENTIFIED PERSONS CATEGORIES

1. **DECEASED:** a person no longer living whose identity cannot be ascertained. This category also includes recovered body parts when a body has been dismembered.
2. **LIVING:** a person who is living and unable to ascertain his or her identity, e.g., amnesia victim or infant. The information on unidentified living persons should be included only if the person gives his or her consent or if they are physically or mentally unable to give consent.
3. **CATASTROPHE:** a person who was a victim of a catastrophe whose identity cannot be ascertained, or body parts when a body has been dismembered as the result of a catastrophe.

## FREQUENTLY USED ACRONYMS

<b>AMBER</b>	America's Missing Broadcast Emergency Response	<b>PKPA</b>	Parental Kidnapping Prevention Act
<b>CLE</b>	Criminal Law Enforcement	<b>PROTECT</b>	Prosecutorial Remedies and Other Tools To End the Exploitation of Children Today Act of 2003
<b>ICARA</b>	International Child Abduction Remedies Act	<b>TCIC</b>	Texas Crime Information Center
<b>IPKCA</b>	International Parental Kidnapping Crime Act of 1993	<b>TX DPS</b>	Texas Department of Public Safety
<b>MCA</b>	Missing Children Act	<b>UCCJA</b>	Uniform Child Custody Jurisdiction Act
<b>MPCH</b>	Missing Persons Clearinghouse	<b>UCCJEA</b>	Uniform Child Custody Jurisdiction and Enforcement Act
<b>MPF</b>	Missing Persons File	<b>VCCA</b>	Violent Crime Control and Law Enforcement Act of 1994 (Violent Crime Control Act)
<b>NCIC</b>	National Crime Information Center		
<b>NCMEC</b>	National Center for Missing & Exploited Children		

## **MISSING PERSONS CLEARINGHOUSE UNIDENTIFIED PERSONS/DNA UNIT**

The Missing Persons Clearinghouse (MPCH) and Unidentified Persons/DNA Unit are part of the Intelligence and Counterterrorism Division of the Texas Department of Public Safety (TX DPS). Both were established to meet the needs of law enforcement and the public.

Since 1986, the MPCH has served as a central repository of information about Texas missing persons or persons missing from other states who are believed to be in Texas. Through the MPCH, information is compiled in a centralized database, providing for the exchange and dissemination of information with the aim of helping law enforcement agencies locate missing persons. The law creating the MPCH requires that each Texas law enforcement agency receiving a report of a missing child or person shall immediately enter the name of the person into the National Crime Information Center (NCIC) with all available identifying features, dental records, fingerprints, other physical characteristics and a description of clothing worn when last seen. Information not immediately available shall be obtained by the agency and entered into the MPCH as a supplement to the original entry as soon as possible. An agency's entry into the NCIC missing persons file results in automatic entry into the MPCH database.

In 2001, the Texas Legislature established a Missing Persons DNA Database at the University of North Texas Health Science Center at Fort Worth. The Unidentified Persons/DNA Unit and the Missing Persons Clearinghouse (MPCH) have formed a partnership with the University of North Texas Center for Human Identification to help link Texas' missing persons to unidentified human remains. The Unidentified Persons/DNA Unit assists law enforcement, medical examiners, and coroners throughout the state with the coordination of DNA samples from unidentified human remains for entry into the University of North Texas Center for Human Identification.

In September of 2007, the Unidentified Persons/DNA Unit was formed. The mission of the Unit is to assist Texas law enforcement in their mandatory requirement to enter all available information regarding an unidentified deceased/living person including identifying features, dental records, fingerprints, any unusual physical characteristics and a description of clothing or personal belongings found on or with the body into the state clearinghouse and the National Crime Information Center (NCIC) Unidentified Person File. Information must be entered no later than the 10th working day after the date of death is reported to the agency.

To assist law enforcement agencies and to keep the public informed, the MPCH, and Unidentified Persons/DNA Unit provide the following services:

***Toll-Free Telephone Line***

*The MPCH provides an incoming toll-free line for parents, law enforcement agencies or others to provide information about missing and unidentified persons. This telephone line is operational twenty-four hours a day, seven days a week: (800) 346-3243.*

***TX DPS Website***

*Within the TX DPS website, the MPCH, Unidentified Persons/DNA Unit web page includes the On-line Missing Persons, Abductors, Companions and Unidentified Persons Bulletins. The bulletins feature photographs and descriptions of abductors, companions, missing and unidentified persons. The web page also provides access to MPCH forms that are used by law enforcement agencies and the public. This website allows for timely posting and is continuously updated, offering the most current information about abductors, companions, missing and unidentified persons. If Internet access is not available, contact the MPCH, Unidentified Persons/DNA Unit for a flier or poster.*

***Brochures***

*The MPCH disseminates educational and informational brochures upon request.*

***Publicity***

*The MPCH works with the media in an effort to publicize photographs and descriptions of missing and unidentified persons.*

***DNA Sample Collection Kits***

*The UNT Center for Human Identification provides DNA family reference sample collection kits and collection training for law enforcement personnel. For questions law enforcement officials may have regarding the UNT Center for Human Identification, call 1-800-763-3147 (local 817-735-0606) or email [missingpersons@unthsc.edu](mailto:missingpersons@unthsc.edu).*

***If additional information is desired about the Texas Missing Persons Clearinghouse, please contact:***

Texas Department of Public Safety  
Intelligence & Counterterrorism Division  
Missing Persons Clearinghouse  
Unidentified Persons/DNA Unit  
P.O. Box 4087  
Austin, Texas 78773-0422  
(512) 424-5074  
(800) 346-3243 Nationwide  
(512) 424-2885 Fax  
[www.dps.texas.gov/mpch](http://www.dps.texas.gov/mpch)

## **CRITERIA FOR PUBLICATION ON THE MISSING & UNIDENTIFIED PERSONS BULLETIN LOCATED ON THE TX DPS WEBSITE**

*The following guidelines must be met before information on a missing or unidentified person can be featured in the TX DPS Missing and Unidentified Persons Bulletin located on the TX DPS Website.*

### **A) MISSING PERSON** (*Information on a Texas missing person or a person missing from another state but believed to be in Texas*)

1. The parent, spouse or guardian must contact a law enforcement agency and file a missing persons report. The missing person must be entered into the NCIC database by the law enforcement agency. If entry problems occur, MPCH will assist the entering agency.
2. A "Missing Persons Clearinghouse Report/Release Form (MP-3 Form)" must be completed, signed and returned to MPCH. (Forms may be obtained from MPCH or downloaded from the website.)
3. A current photograph must be submitted to MPCH (NOTE: Do not write on back of photo).
4. In a case of parental abduction, a copy of the court-certified custody order must be submitted to MPCH.
5. The parent, spouse, guardian and investigating officer must notify MPCH immediately upon location or return of the missing person.

### **B) UNIDENTIFIED PERSON**

1. An unidentified deceased or living person or catastrophe victim must be entered into the NCIC database by the law enforcement agency. If entry problems occur, Unidentified Persons/DNA Unit will assist the entering agency.
2. The law enforcement agency should submit as much pertinent information as possible on the unidentified person, including a photograph, dental records, fingerprints, scars, marks, tattoos, etc.
3. The entering law enforcement agency must notify Unidentified Persons/DNA Unit immediately upon identification of the person.

# TEXAS CODE OF CRIMINAL PROCEDURE

## CHAPTER 2 ❖ GENERAL DUTIES OF OFFICERS

### CCP Art. 2.13 ❖ DUTIES AND POWERS

- (a) It is the duty of every peace officer to preserve the peace within the officer's jurisdiction. To effect this purpose, the officer shall use all lawful means.
- (b) The officer shall:
  - (1) in every case authorized by the provisions of this Code, interfere without warrant to prevent or suppress crime;
  - (2) execute all lawful process issued to the officer by any magistrate or court;
  - (3) give notice to some magistrate of all offenses committed within the officer's jurisdiction, where the officer has good reason to believe there has been a violation of the penal law; and
  - (4) arrest offenders without warrant in every case where the officer is authorized by law, in order that they may be taken before the proper magistrate or court and be tried.
- (c) It is the duty of every officer to take possession of a child under Article 63.009(g).

### CCP Art. 2.272 ❖ LAW ENFORCEMENT RESPONSE TO CHILD SAFETY CHECK ALERT

- (a) If a peace officer locates a child or other person listed on the Texas Crime Information Center's child safety check alert list established under Section 261.3022, Family Code, the officer shall:
  - (1) immediately contact the Department of Family and Protective Services on the department's dedicated law-enforcement telephone number for statewide intake;
  - (2) request information from the department regarding the circumstances of the case involving the child or other person; and
  - (3) request information from the child and the other person regarding the child's safety, well-being, and current residence.
- (b) The peace officer may temporarily detain the child or other person to ensure the safety and well-being of the child.
- (c) If the peace officer determines that the circumstances described by Section 262.104, Family Code, exist, the officer may take temporary possession of the child without a court order as provided by Section 262.104, Family Code. If the peace officer does not take temporary possession of the child, the officer shall obtain the child's current address and any other relevant information and report that information to the Department of Family and Protective Services.
- (d) A peace officer who locates a child or other person listed on the Texas Crime Information Center's child safety check alert list and who reports the child's or other person's current address and other relevant information to the Department of Family and Protective Services shall report to the Texas Crime Information Center that the child or other person has been located and to whom the child was released, as applicable.

### CCP Art. 2.273 ❖ RELEASE OF CHILD BY LAW ENFORCEMENT OFFICER

- (a) A law enforcement officer who takes possession of a child under Section 262.104, Family Code, may release the child to:
  - (1) a residential child-care facility licensed by the Department of Family and Protective Services under Chapter 42, Human Resources Code, if the facility is authorized by the department to take possession of the child;
  - (2) a juvenile probation department;
  - (3) the Department of Family and Protective Services; or
  - (4) any other person authorized by law to take possession of the child.
- (b) Before a law enforcement officer may release a child to a person authorized by law to take possession of the child other than a governmental entity, the officer shall:
  - (1) verify with the National Crime Information Center that the child is not a missing child;
  - (2) search the relevant databases of the National Crime Information Center system, including those pertaining to protection orders, historical protection orders, warrants, sex offender registries, and persons on supervised release to:
    - (A) verify that the person to whom the child is being released:
      - (i) does not have a protective order issued against the person; and
      - (ii) is not registered as a sex offender unless the person is the child's parent or guardian and there are no restrictions regarding the person's contact with the child; and
    - (B) obtain any other information the Department of Family and Protective Services considers:

- (i) relevant to protect the welfare of the child; or
- (ii) reflective of the responsibility of the person to whom the child is being released;
- (3) call the Department of Family and Protective Services Texas Abuse Hotline to determine whether the person to whom the child is being released is listed in the registry as a person who abused or neglected a child;
- (4) verify that the person to whom the child is being released is at least 18 years of age; and
- (5) maintain a record regarding the child's placement, including:
  - (A) identifying information about the child, including the child's name or pseudonyms; and
  - (B) the name and address of the person to whom the child is being released.

## **CHAPTER 7A ❖ PROTECTIVE ORDER FOR CERTAIN VICTIMS OF TRAFFICKING OR SEXUAL ASSAULT OR STALKING**

### **CCP Art. 7A.01 ❖ APPLICATION FOR PROTECTIVE ORDER**

*[One of two versions of (a), as added by Acts 2011, 82nd Legislature, R.S., Chapter 1, Section 2.02, per 82R-SB24]*

- (a) The following persons may file an application for a protective order under this chapter without regard to the relationship between the applicant and the alleged offender:
  - (1) a person who is the victim of an offense under Section 21.02, 21.11, 22.011, or 22.021, Penal Code;
  - (2) a person who is the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) or Section 43.05, Penal Code;
  - (3) a parent or guardian acting on behalf of a person younger than 18 years of age who is the victim of an offense listed in Subdivision (1) or (2); or
  - (4) a prosecuting attorney acting on behalf of a person described by Subdivision (1) or (2).

*[One of two versions of (a), as added by Acts 2011, 82nd Legislature, R.S., Chapter 135, Section 2, per 82R-SB250]*

- (a) A person who is the victim of an offense under Section 21.02, 21.11, 22.011, 22.021, or 42.072, Penal Code, a parent or guardian acting on behalf of a person younger than 17 years of age who is the victim of such an offense, or a prosecuting attorney acting on behalf of the person may file an application for a protective order under this chapter without regard to the relationship between the applicant and the alleged offender.
- (b) An application for a protective order under this chapter may be filed in a district court, juvenile court having the jurisdiction of a district court, statutory county court, or constitutional county court in:
  - (1) the county in which the applicant resides; or
  - (2) the county in which the alleged offender resides.

### **CCP Art. 7A.02 ❖ TEMPORARY EX PARTE ORDER**

If the court finds from the information contained in an application for a protective order that there is a clear and present danger of sexual assault, stalking, or other harm to the applicant, the court, without further notice to the alleged offender and without a hearing, may enter a temporary ex parte order for the protection of the applicant or any other member of the applicant's family or household.

*[One of two versions of 7A.03, as added by Acts 2011, 82nd Legislature, R.S., Chapter 238, Section 1, per 82R-HB649]*

### **CCP Art. 7A.03 ❖ REQUIRED FINDINGS; ISSUANCE OF PROTECTIVE ORDER**

- (a) At the close of a hearing on an application for a protective order under this chapter, the court shall find whether there are reasonable grounds to believe that the applicant is the victim of a sexual assault.
- (b) If the court finds reasonable grounds to believe that the applicant is the victim of a sexual assault, the court shall issue a protective order that includes a statement of the required findings.

*[One of two versions of 7A.03, as added by Acts 2011, 82nd Legislature, R.S., Chapter 135, Section 4, per 82R-SB250]*

### **CCP Art. 7A.03 ❖ REQUIRED FINDINGS; ISSUANCE OF PROTECTIVE ORDER**

- (a) At the close of a hearing on an application for a protective order under this chapter, the court shall find whether there are reasonable grounds to believe that the applicant is the victim of:
  - (1) sexual assault and:
    - (A) is younger than 18 years of age; or
    - (B) regardless of age, is the subject of a threat that reasonably places the applicant in fear of further harm from the alleged offender; or
  - (2) stalking.



- (b) If the court makes a finding described by Subsection (a)(1) or (2), the court shall issue a protective order that includes a statement of the required findings.

**CCP Art. 7A.035 ❖ HEARSAY STATEMENT OF CHILD VICTIM**

In a hearing on an application for a protective order under this chapter, a statement that is made by a child younger than 14 years of age who is the victim of an offense under Section 21.02, 21.11, 22.011, or 22.021, Penal Code, and that describes the offense committed against the child is admissible as evidence in the same manner that a child's statement regarding alleged abuse against the child is admissible under Section 104.006, Family Code, in a suit affecting the parent-child relationship.

**CCP Art. 7A.04 ❖ APPLICATION OF OTHER LAW**

To the extent applicable, except as otherwise provided by this chapter, Title 4, Family Code, applies to a protective order issued under this chapter.

**CCP Art. 7A.05 ❖ CONDITIONS SPECIFIED BY ORDER**

- (a) In a protective order issued under this chapter, the court may:
- (1) order the alleged offender to take action as specified by the court that the court determines is necessary or appropriate to prevent or reduce the likelihood of future harm to the applicant or a member of the applicant's family or household; or
  - (2) prohibit the alleged offender from:
    - (A) communicating directly or indirectly with the applicant or any member of the applicant's family or household in a threatening or harassing manner;
    - (B) going to or near the residence, place of employment or business, or child-care facility or school of the applicant or any member of the applicant's family or household;
    - (C) engaging in conduct directed specifically toward the applicant or any member of the applicant's family or household, including following the person, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass the person; and
    - (D) possessing a firearm, unless the alleged offender is a peace officer, as defined by Section 1.07, Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.
- (b) In an order under Subsection (a)(2)(B), the court shall specifically describe each prohibited location and the minimum distance from the location, if any, that the alleged offender must maintain. This subsection does not apply to an order with respect to which the court has received a request to maintain confidentiality of information revealing the locations.
- (c) In a protective order, the court may suspend a license to carry a concealed handgun issued under Section 411.177, Government Code, that is held by the alleged offender.

**CCP Art. 7A.06 ❖ WARNING ON PROTECTIVE ORDER**

- (a) Each protective order issued under this chapter, including a temporary ex parte order, must contain the following prominently displayed statements in boldfaced type, capital letters, or underlined:
- “A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR CONTEMPT OF COURT BY A FINE OF AS MUCH AS \$500 OR BY CONFINEMENT IN JAIL FOR AS LONG AS SIX MONTHS, OR BOTH.”
- “NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER.”
- “IT IS UNLAWFUL FOR ANY PERSON, OTHER THAN A PEACE OFFICER, AS DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO A PROTECTIVE ORDER TO POSSESS A FIREARM OR AMMUNITION.”
- (b) Each protective order issued under this chapter, except for a temporary ex parte order, must contain the following prominently displayed statement in boldfaced type, capital letters, or underlined:
- “A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH. AN ACT THAT RESULTS IN A SEPARATE OFFENSE MAY BE PROSECUTED AS A SEPARATE OFFENSE IN ADDITION TO A VIOLATION OF THIS ORDER.”

## **CCP Art. 7A.07 ❖ DURATION OF PROTECTIVE ORDER**

- (a) A protective order issued under Article 7A.03 may be effective for the duration of the lives of the offender and victim or for any shorter period stated in the order. If a period is not stated in the order, the order is effective until the second anniversary of the date the order was issued.
- (b) A victim who is 17 years of age or older or a parent or guardian acting on behalf of a victim who is younger than 17 years of age may file at any time an application with the court to rescind the protective order.
- (c) If a person who is the subject of a protective order issued under Article 7A.03 is confined or imprisoned on the date the protective order is due to expire under Subsection (a), the period for which the order is effective is extended, and the order expires on the first anniversary of the date the person is released from confinement or imprisonment.
- (d) To the extent of any conflict with Section 85.025, Family Code, this article prevails.

## **CHAPTER 49 ❖ INQUESTS UPON DEAD BODIES**

### **CCP §49.04 ❖ DEATHS REQUIRING AN INQUEST**

- (a) . . .
  - (3) the body or a body part of a person is found, the cause or circumstances of death are unknown, and: . . .
    - (B) the person is unidentified; . . .
- (d) A justice of the peace investigating a death described by Subsection (a)(3)(B) shall report the death to the missing children and missing persons information clearinghouse of the Department of Public Safety and the national crime information center not later than the 10th working day after the date the investigation began.

### **CCP §49.25 ❖ MEDICAL EXAMINERS**

#### **Sec. 9. AUTOPSY**

- (a) If the cause of death shall be determined beyond a reasonable doubt as a result of the investigation, the medical examiner shall file a report thereof setting forth specifically the cause of death with the district attorney or criminal district attorney, or in a county in which there is no district attorney or criminal district attorney with the county attorney, of the county in which the death occurred. If in the opinion of the medical examiner an autopsy is necessary, or if such is requested by the district attorney or criminal district attorney, or county attorney where there is no district attorney or criminal district attorney, the autopsy shall be immediately performed by the medical examiner or a duly authorized deputy. In those cases where a complete autopsy is deemed unnecessary by the medical examiner to ascertain the cause of death, the medical examiner may perform a limited autopsy involving the taking of blood samples or any other samples of body fluids, tissues or organs, in order to ascertain the cause of death or whether a crime has been committed. In the case of a body of a human being whose identity is unknown, the medical examiner may authorize such investigative and laboratory tests and processes as are required to determine its identity as well as the cause of death. In performing an autopsy the medical examiner or authorized deputy may use the facilities of any city or county hospital within the county or such other facilities as are made available. Upon completion of the autopsy, the medical examiner shall file a report setting forth the findings in detail with the office of the district attorney or criminal district attorney of the county, or if there is no district attorney or criminal district attorney, with the county attorney of the county.
- (b) A medical examination on an unidentified person shall include the following information to enable a timely and accurate identification of the person:
  - (1) all available fingerprints and palm prints;
  - (2) dental charts and radiographs (X-rays) of the person's teeth;
  - (3) frontal and lateral facial photographs with scale indicated;
  - (4) notation and photographs, with scale indicated, of a significant scar, mark, tattoo, or item of clothing or other personal effect found with or near the body;
  - (5) notation of antemortem medical conditions;
  - (6) notation of observations pertinent to the estimation of time of death; and
  - (7) precise documentation of the location of burial of the remains.
- (c) A medical examination on an unidentified person may include the following information to enable a timely and accurate identification of the person:
  - (1) full body radiographs (X-rays); and
  - (2) hair specimens with roots.

## **Sec. 10. DISINTERMENTS AND CREMATIONS**

When a body upon which an inquest ought to have been held has been interred, the medical examiner may cause it to be disinterred for the purpose of holding such inquest.

Before any body, upon which an inquest is authorized by the provisions of this Article, can be lawfully cremated, an autopsy shall be performed thereon as provided in this Article, or a certificate that no autopsy was necessary shall be furnished by the medical examiner. Before any dead body can be lawfully cremated, the owner or operator of the crematory shall demand and be furnished with a certificate, signed by the medical examiner of the county in which the death occurred showing that an autopsy was performed on said body or that no autopsy thereon was necessary. It shall be the duty of the medical examiner to determine whether or not, from all the circumstances surrounding the death, an autopsy is necessary prior to issuing a certificate under the provisions of this section. No autopsy shall be required by the medical examiner as a prerequisite to cremation in case death is caused by the pestilential diseases of Asiatic cholera, bubonic plague, typhus fever, or smallpox. All certificates furnished to the owner or operator of a crematory by any medical examiner, under the terms of this Article, shall be preserved by such owner or operator of such crematory for a period of two years from the date of the cremation of said body. A medical examiner is not required to perform an autopsy on the body of a deceased person whose death was caused by a communicable disease during a public health disaster . . .

## **Sec. 10b. DISPOSAL OF UNIDENTIFIED BODY**

If the body of a deceased person is unidentified, a person may not cremate or direct the cremation of the body under this article. If the body is buried, the investigating agency responsible for the burial shall record and maintain for not less than 10 years all information pertaining to the body and the location of burial.

## **Sec. 11. RECORDS**

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. The full report and detailed findings of the autopsy, if any, shall be a part of the record. Copies of all records shall promptly be delivered to the proper district, county, or criminal district attorney in any case where further investigation is advisable. The records are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement. . . .

## **Sec. 13. USE OF FORENSIC ANTHROPOLOGIST**

On discovering the body or body part of a deceased person in the circumstances described by Subdivision 3(B) of Section 6(a), the medical examiner may request the aid of a forensic anthropologist in the examination of the body or body part. The forensic anthropologist must hold a doctoral degree in anthropology with an emphasis in physical anthropology. The forensic anthropologist shall attempt to establish whether the body or body part is of a human or animal, whether evidence of childbirth, injury, or disease exists, and the sex, race, age, stature, and physical anomalies of the body or body part. The forensic anthropologist may also attempt to establish the cause, manner, and time of death . . .

# **CHAPTER 63. ❖ MISSING CHILDREN AND MISSING PERSONS**

## **SUBCHAPTER A ❖ GENERAL PROVISIONS**

**CCP §63.001 ❖ DEFINITIONS** In this chapter:

- (1) "Abduct" has the meaning assigned by Section 20.01, Penal Code.
- (1-a) "Child" means a person under 18 years of age.
- (2) "Missing person" means a person 18 years old or older whose disappearance is possibly not voluntary.
- (3) "Missing child" means a child whose whereabouts are unknown to the child's legal custodian, the circumstances of whose absence indicate that:
  - (A) the child did not voluntarily leave the care and control of the custodian, and the taking of the child was not authorized by law;
  - (B) the child voluntarily left the care and control of the custodian without the custodian's consent and without intent to return;

- (C) the child was taken or retained in violation of the terms of a court order for possession of or access to the child; or
  - (D) the child was taken or retained without the permission of the custodian and with the effect of depriving the custodian of possession of or access to the child unless the taking or retention of the child was prompted by the commission or attempted commission of family violence, as defined by Section 71.004, Family Code, against the child or the actor.
- (4) "Missing child" or "missing person" also includes a person of any age who is missing and:
    - (A) is under proven physical or mental disability or is senile, and because of one or more of these conditions is subject to immediate danger or is a danger to others;
    - (B) is in the company of another person or is in a situation the circumstances of which indicate that the missing child's or missing person's safety is in doubt; or
    - (C) is unemancipated as defined by the law of this state.
  - (5) "Missing child or missing person report" means information that is:
    - (A) given to a law enforcement agency on a form used for sending information to the national crime information center; and
    - (B) about a child or missing person whose whereabouts are unknown to the reporter and who is alleged in the form by the reporter to be missing.
  - (6) "Legal custodian of a child" means a parent of a child if no managing conservator or guardian of the person of the child has been appointed, the managing conservator of a child or a guardian of a child if a managing conservator or guardian has been appointed for the child, a possessory conservator of a child if the child is absent from the possessory conservator of the child at a time when the possessory conservator is entitled to possession of the child and the child is not believed to be with the managing conservator, or any other person who has assumed temporary care and control of a child if at the time of disappearance the child was not living with his parent, guardian, managing conservator, or possessory conservator.
  - (7) "Clearinghouse" means the missing children and missing persons information clearinghouse.
  - (8) "Law enforcement agency" means a police department of a city in this state, a sheriff of a county in this state, or the Department of Public Safety.
  - (9) "Possible match" occurs if the similarities between an unidentified body and a missing child or person would lead one to believe they are the same person.
  - (10) "City or state agency" means an employment commission, the Texas Department of Human Services, the Texas Department of Transportation, and any other agency that is funded or supported by the state or a city government.
  - (11) "Birth certificate agency" means a municipal or county official that records and maintains birth certificates and the bureau of vital statistics.
  - (12) "Bureau of vital statistics" means the bureau of vital statistics of the Texas Department of Health.
  - (13) "School" means a public primary school or private primary school that charges a fee for tuition and has more than 25 students enrolled and attending courses at a single location.

**CCP §63.0015 ❖ PRESUMPTION REGARDING PARENTAGE**

For purposes of this chapter, a person named as a child's mother or father in the child's birth certificate is presumed to be the child's parent.

**CCP §63.0016 ❖ ATTEMPTED CHILD ABDUCTION BY RELATIVE**

For purposes of this chapter, "attempted child abduction" does not include an attempted abduction in which the actor was a relative, as defined by Section 20.01, Penal Code, of the person intended to be abducted.

**CCP §63.002 ❖ MISSING CHILDREN AND MISSING PERSONS INFORMATION CLEARINGHOUSE**

- (a) The missing children and missing persons information clearinghouse is established within the Department of Public Safety.
- (b) The clearinghouse is under the administrative direction of the director of the department.
- (c) The clearinghouse shall be used by all law enforcement agencies of the state.

**CCP §63.003 ❖ FUNCTION OF CLEARINGHOUSE**

- (a) The clearinghouse is a central repository of information on missing children, missing persons, and attempted child abductions.
- (b) The clearinghouse shall:

- (1) establish a system of intrastate communication of information relating to missing children and missing persons;
- (2) provide a centralized file for the exchange of information on missing children, missing persons, and unidentified dead bodies within the state;
- (3) communicate with the national crime information center for the exchange of information on missing children and missing persons suspected of interstate travel;
- (4) collect, process, maintain, and disseminate accurate and complete information on missing children and missing persons;
- (5) provide a statewide toll-free telephone line for the reporting of missing children and missing persons and for receiving information on missing children and missing persons;
- (6) provide and disseminate to legal custodians, law enforcement agencies, and the Texas Education Agency information that explains how to prevent child abduction and what to do if a child becomes missing; and
- (7) receive and maintain information on attempted child abductions in this state.

#### **CCP §63.004 ❖ REPORT FORMS**

- (a) The Department of Public Safety shall distribute missing children and missing person report forms.
- (b) A missing child or missing person report may be made to a law enforcement officer authorized by that department to receive reports in person or by telephone or other indirect method of communication and the officer may enter the information on the form for the reporting person. A report form may also be completed by the reporting person and delivered to a law enforcement officer.

#### **CCP §63.0041 ❖ REPORTING OF ATTEMPTED CHILD ABDUCTION**

- (a) A local law enforcement agency, on receiving a report of an attempted child abduction, shall as soon as practicable, but not later than eight hours after receiving the report, provide any relevant information regarding the attempted child abduction to the clearinghouse. Information not immediately available shall be obtained by the agency and entered into the clearinghouse as a supplement to the original entry as soon as possible.
- (b) A law enforcement officer or local law enforcement agency reporting an attempted child abduction to the clearinghouse shall make the report by use of the Texas Law Enforcement Telecommunications System or a successor system of telecommunication used by law enforcement agencies and operated by the Department of Public Safety.

#### **CCP §63.005 ❖ DISTRIBUTION OF INFORMATION**

- (a) The clearinghouse shall print and distribute posters, flyers, and other forms of information containing descriptions of missing children.
- (b) The clearinghouse shall also provide to the Texas Education Agency information about missing children who may be located in the school systems.
- (c) The clearinghouse may also receive information about missing children from the Public Education Information Management System of the Texas Education Agency and from school districts.

#### **CCP §63.006 ❖ RELEASE OF DENTAL RECORDS**

- (a) At the time a report is made for a missing child, the person to whom the report is given shall give or mail to the reporter a dental record release form. The officer receiving the report shall endorse the form with the notation that a missing child report has been made in compliance with this chapter. When the form is properly completed by the reporter, and contains the endorsement, the form is sufficient to permit any dentist or physician in this state to release dental records relating to the child reported missing.
- (b) At any time a report is made for a missing person the law enforcement officer taking the report shall complete a dental release form that states that the person is missing and that there is reason to believe that the person has not voluntarily relocated or removed himself from communications with others and that authorizes the bearer of the release to obtain dental information records from any dentist or physician in this state.
- (c) Any person who obtains dental records through the use of the form authorized by this article shall send the records to the clearinghouse.
- (d) The judge of any court of record of this state may for good cause shown authorize the release of dental records of a missing child or missing person.
- (e) A dentist or physician who releases dental records to a person presenting a proper release executed or ordered under this article is immune from civil liability or criminal prosecution for the release of those records.

### **CCP §63.007 ❖ RELEASE OF MEDICAL RECORDS**

- (a) At the time a report is made for a missing child or adult, the law enforcement officer taking the report shall give a medical record release form to the parent, spouse, adult child, or legal guardian who is making the report. The officer receiving the report shall endorse the form with the notation that a missing child or missing adult report has been made in compliance with this chapter. When the form is properly completed by the parent, spouse, adult child, or legal guardian, and contains the endorsement, the form is sufficient to permit any physician, health care facility, or other licensed health care provider in this state to release to the law enforcement officer presenting the release dental records, blood type, height, weight, X rays, and information regarding scars, allergies, or any unusual illnesses suffered by the person who is reported missing. Except as provided by Subsection (d), a medical record of a missing child may be released only if the medical record release form is signed by a parent or legal guardian.
- (b) At any time a report is made for an adult missing person, the law enforcement officer taking the report shall complete a medical release form that states that the person is missing and that there is reason to believe that the person has not voluntarily relocated or removed himself or herself from communications with others. A release under this subsection is not valid unless it is signed by the adult missing person's:
  - (1) spouse; (3) parent; or
  - (2) adult child who is reasonably available; (4) legal guardian.
- (c) A law enforcement officer who obtains medical records under this article shall send a copy of the records to the clearinghouse. A law enforcement officer who obtains records under this article, a law enforcement agency using the records, and the clearinghouse are prohibited from disclosing the information contained in or obtained through the medical records unless permitted by law. Information contained in or obtained through medical records may be used only for purposes directly related to locating the missing person.
- (d) The judge of any court of record of this state may for good cause shown authorize the release of pertinent medical records of a missing child or missing adult.
- (e) A physician, health care facility, or other licensed health care provider releasing a medical record to a person presenting a proper release executed or ordered under this article is immune from civil liability or criminal prosecution for the release of the record.

### **CCP §63.008 ❖ MISSING CHILDREN PROGRAM**

- (a) The Texas Education Agency shall develop and administer a program for the location of missing children who may be enrolled within the Texas school system, including nonpublic schools, and for the reporting of children who may be missing or who may be unlawfully removed from schools.
- (b) The program shall include the use of information received from the missing children and missing persons information clearinghouse and shall be coordinated with the operations of that information clearinghouse.
- (c) The State Board of Education may adopt rules for the operation of the program and shall require the participation of all school districts and accredited private schools in this state.

### **CCP §63.009 ❖ LAW ENFORCEMENT REQUIREMENTS**

- (a) Local law enforcement agencies, on receiving a report of a missing child or a missing person, shall:
  - (1) if the subject of the report is a child and the child is at a high risk of harm or is otherwise in danger or if the subject of the report is a person who is known by the agency to have or is reported to have chronic dementia, including Alzheimer's dementia, whether caused by illness, brain defect, or brain injury, immediately start an investigation in order to determine the present location of the child or person;
  - (2) if the subject of the report is a child or person other than a child or person described by Subdivision (1), start an investigation with due diligence in order to determine the present location of the child or person;
  - (3) immediately, but not later than two hours after receiving the report, enter the name of the child or person into the clearinghouse, the national crime information center missing person file if the child or person meets the center's criteria, and the Alzheimer's Association Safe Return crisis number, if applicable, with all available identifying features such as dental records, fingerprints, other physical characteristics, and a description of the clothing worn when last seen, and all available information describing any person reasonably believed to have taken or retained the missing child or missing person; and
  - (4) inform the person who filed the report of the missing child or missing person that the information will be entered into the clearinghouse, the national crime information center missing person file, and the Alzheimer's Association Safe Return crisis number, if applicable.
- (a-1) A local law enforcement agency, on receiving a report of a child missing under the circumstances described by Article 63.001(3)(D) for a period of not less than 48 hours, shall immediately make a reasonable effort to locate the child and determine the well-being of the child. On determining the location of the child, if the agency has reason to believe that the child is a victim of abuse or neglect as defined by Section 261.001, Family Code, the agency:

- (1) shall notify the Department of Family and Protective Services; and
  - (2) may take possession of the child under Subchapter B, Chapter 262, Family Code.
- (a-2) The Department of Family and Protective Services, on receiving notice under Subsection (a-1), may initiate an investigation into the allegation of abuse or neglect under Section 261.301, Family Code, and take possession of the child under Chapter 262, Family Code.
- (b) Information not immediately available shall be obtained by the agency and entered into the clearinghouse and the national crime information center file as a supplement to the original entry as soon as possible.
- (c) All Texas law enforcement agencies are required to enter information about all unidentified bodies into the clearinghouse and the national crime information center unidentified person file. A law enforcement agency shall, not later than the 10th working day after the date the death is reported to the agency, enter all available identifying features of the unidentified body (fingerprints, dental records, any unusual physical characteristics, and a description of the clothing found on the body) into the clearinghouse and the national crime information center file. If an information entry into the national crime information center file results in an automatic entry of the information into the clearinghouse, the law enforcement agency is not required to make a direct entry of that information into the clearinghouse.
- (d) If a local law enforcement agency investigating a report of a missing child or missing person obtains a warrant for the arrest of a person for taking or retaining the missing child or missing person, the local law enforcement agency shall immediately enter the name and other descriptive information of the person into the national crime information center wanted person file if the person meets the center's criteria. The local law enforcement agency shall also enter all available identifying features, including dental records, fingerprints, and other physical characteristics of the missing child or missing person. The information shall be cross-referenced with the information in the national crime information center missing person file.
- (e) A local law enforcement agency that has access to the national crime information center database shall cooperate with other law enforcement agencies in entering or retrieving information from the national crime information center database.
- (f) Immediately after the return of a missing child or missing person or the identification of an unidentified body, the local law enforcement agency having jurisdiction of the investigation shall cancel the entry in the national crime information center database.
- (g) On determining the location of a child under Subsection (a)(1) or (2), other than a child who is subject to the continuing jurisdiction of a district court, an officer shall take possession of the child and shall deliver or arrange for the delivery of the child to a person entitled to possession of the child. If the person entitled to possession of the child is not immediately available, the law enforcement officer shall deliver the child to the Department of Protective and Regulatory Services.

**CCP §63.0091 ❖ LAW ENFORCEMENT REQUIREMENTS REGARDING REPORTS OF CERTAIN MISSING CHILDREN**

- (a) The public safety director of the Department of Public Safety shall adopt rules regarding the procedures for a local law enforcement agency on receiving a report of a missing child who:
- (1) had been reported missing on four or more occasions in the 24-month period preceding the date of the current report;
  - (2) is in foster care or in the conservatorship of the Department of Family and Protective Services and had been reported missing on two or more occasions in the 24-month period preceding the date of the current report; or
  - (3) is under 14 years of age and otherwise determined by the local law enforcement agency or the Department of Public Safety to be at a high risk of human trafficking, sexual assault, exploitation, abuse, or neglectful supervision.
- (b) The rules adopted under this article must require that in entering information regarding the report into the national crime information center missing person file as required by Article 63.009(a)(3) for a missing child described by Subsection (a), the local law enforcement agency shall indicate, in the manner specified in the rules, that the child is at a high risk of harm and include relevant information regarding any prior occasions on which the child was reported missing.
- (c) If, at the time the initial entry into the national crime information center missing person file is made, the local law enforcement agency has not determined that the requirements of this article apply to the report of the missing child, the information required by Subsection (b) must be added to the entry promptly after the agency investigating the report or the Department of Public Safety determines that the missing child is described by Subsection (a).

**CCP §63.0092 ❖ OPTION TO DESIGNATE MISSING CHILD AS HIGH RISK**

- (a) This article applies to a report of a missing child who is at least 14 years of age and who a local law enforcement agency or the Department of Public Safety determines is at a high risk of human trafficking, sexual assault, exploitation, abuse, or neglectful supervision.
- (b) In entering information regarding a report described by Subsection (a) into the national crime information center missing person file as required by Article 63.009(a)(3), the local law enforcement agency may indicate that the child is at a high risk of harm and may include any other relevant information.

**CCP §63.010 ❖ ATTORNEY GENERAL TO REQUIRE COMPLIANCE**

The attorney general shall require each law enforcement agency to comply with this chapter and may seek writs of mandamus or other appropriate remedies to enforce this chapter.

**CCP §63.011 ❖ MISSING CHILDREN INVESTIGATIONS**

On the written request made to a law enforcement agency by a parent, foster parent, managing or possessory conservator, guardian of the person or the estate, or other court-appointed custodian of a child whose whereabouts are unknown, the law enforcement agency shall request from the missing children and missing persons information clearinghouse information concerning the child that may aid the person making the request in the identification or location of the child.

**CCP §63.012 ❖ REPORT OF INQUIRY**

A law enforcement agency to which a request has been made under Article 63.011 of this code shall report to the parent on the results of its inquiry within 14 days after the day that the written request is filed with the law enforcement agency.

**CCP §63.013 ❖ INFORMATION TO CLEARINGHOUSE**

Each law enforcement agency shall provide to the missing children and missing persons information clearinghouse:

- (1) any information that would assist in the location or identification of any missing child who has been reported to the agency as missing; and
- (2) any information regarding an attempted child abduction that has been reported to the agency or that the agency has received from any person or another agency.

**CCP §63.014 ❖ CROSS-CHECKING AND MATCHING**

- (a) The clearinghouse shall cross-check and attempt to match unidentified bodies with missing children or missing persons. When the clearinghouse discovers a possible match between an unidentified body and a missing child or missing person, the Department of Public Safety shall notify the appropriate law enforcement agencies.
- (b) Those law enforcement agencies that receive notice of a possible match shall make arrangements for positive identification and complete and close out the investigation with notification to the clearinghouse.

**CCP §63.015 ❖ AVAILABILITY OF INFORMATION THROUGH OTHER AGENCIES**

- (a) On the request of any law enforcement agency, a city or state agency shall furnish the law enforcement agency with any information about a missing child or missing person that will assist in completing the investigation.
- (b) The information given under Subsection (a) of this article is confidential and may not be released to any other person outside of the law enforcement agency.

**CCP §63.016 ❖ DONATIONS**

The Department of Public Safety may accept money donated from any source to assist in financing the activities and purposes of the missing children and missing persons information clearinghouse.

**CCP §63.017 ❖ CONFIDENTIALITY OF CERTAIN RECORDS**

Clearinghouse records that relate to the investigation by a law enforcement agency of a missing child, a missing person, or an unidentified body and records or notations that the clearinghouse maintains for internal use in matters relating to missing children, missing persons, or unidentified bodies are confidential.



### **CCP §63.018 ❖ DEATH CERTIFICATES**

A physician who performs a postmortem examination on the body of an unidentified person shall complete and file a death certificate in accordance with Chapter 193, Health and Safety Code. The physician shall note on the certificate the name of the law enforcement agency that submitted the body for examination and shall send a copy of the certificate to the clearinghouse not later than the 10th working day after the date the physician files the certificate.

### **CCP §63.019 ❖ SCHOOL RECORDS SYSTEM**

- (a) On enrollment of a child under 11 years of age in a school for the first time at the school, the school shall:
  - (1) request from the person enrolling the child the name of each previous school attended by the child;
  - (2) request from each school identified in Subdivision (1), the school records for the child and, if the person enrolling the child provides copies of previous school records, request verification from the school of the child's name, address, birth date, and grades and dates attended; and
  - (3) notify the person enrolling the student that not later than the 30th day after enrollment, or the 90th day if the child was not born in the United States, the person must provide:
    - (A) a certified copy of the child's birth certificate; or
    - (B) other reliable proof of the child's identity and age and a signed statement explaining the person's inability to produce a copy of the child's birth certificate.
- (b) If a person enrolls a child under 11 years of age in school and does not provide the valid prior school information or documentation required by this section, the school shall notify the appropriate law enforcement agency before the 31st day after the person fails to comply with this section. On receipt of notification, the law enforcement agency shall immediately check the clearinghouse to determine if the child has been reported missing. If the child has been reported missing, the law enforcement agency shall immediately notify other appropriate law enforcement agencies that the missing child has been located.

### **CCP §63.020 ❖ DUTY OF SCHOOLS AND OTHER ENTITIES TO FLAG MISSING CHILDREN'S RECORDS**

- (a) When a report that a child under 11 years of age is missing is received by a law enforcement agency, the agency shall immediately notify each school and day care facility that the child attended or in which the child was enrolled as well as the bureau of vital statistics, if the child was born in the state, that the child is missing.
- (b) On receipt of notice that a child under 11 years of age is missing, the bureau of vital statistics shall notify the appropriate municipal or county birth certificate agency that the child is missing.
- (c) A school, day care facility, or birth certificate agency that receives notice concerning a child under this section shall flag the child's records that are maintained by the school, facility, or agency.
- (d) The law enforcement agency shall notify the clearinghouse that the notification required under this section has been made. The clearinghouse shall provide the notice required under this section if the clearinghouse determines that the notification has not been made by the law enforcement agency.
- (e) If a missing child under 11 years of age, who was the subject of a missing child report made in this state, was born in or attended a school or licensed day care facility in another state, the law enforcement agency shall notify law enforcement or the missing and exploited children clearinghouse in each appropriate state regarding the missing child and request the law enforcement agency or clearinghouse to contact the state birth certificate agency and each school or licensed day care facility the missing child attended to flag the missing child's records.

### **CCP §63.021 ❖ SYSTEM FOR FLAGGING RECORDS**

- (a) On receipt of notification by a law enforcement agency or the clearinghouse regarding a missing child under 11 years of age, the school, day care facility, or birth certificate agency shall maintain the child's records in its possession so that on receipt of a request regarding the child, the school, day care facility, or agency will be able to notify law enforcement or the clearinghouse that a request for a flagged record has been made.
- (b) When a request concerning a flagged record is made in person, the school, day care facility, or agency may not advise the requesting party that the request concerns a missing child and shall:
  - (1) require the person requesting the flagged record to complete a form stating the person's name, address, telephone number, and relationship to the child for whom a request is made and the name, address, and birth date of the child;
  - (2) obtain a copy of the requesting party's driver's license or other photographic identification, if possible;
  - (3) if the request is for a birth certificate, inform the requesting party that a copy of a certificate will be sent by mail; and
  - (4) immediately notify the appropriate law enforcement agency that a request has been made concerning a flagged record and include a physical description of the requesting party, the identity and address of the requesting party, and a copy of the requesting party's driver's license or other photographic identification.

- (c) After providing the notification required under Subsection (a)(4), the school, day care facility, or agency shall mail a copy of the requested record to the requesting party on or after the 21st day after the date of the request.
- (d) When a request concerning a flagged record is made in writing, the school, day care facility, or agency may not advise the party that the request concerns a missing child and shall immediately notify the appropriate law enforcement agency that a request has been made concerning a flagged record and provide to the law enforcement agency a copy of the written request. After providing the notification under this subsection, the school, day care facility, or agency shall mail a copy of the requested record to the requesting party on or after the 21st day after the date of the request.

**CCP §63.022 ❖ REMOVAL OF FLAG FROM RECORDS**

- (a) On the return of a missing child under 11 years of age, the law enforcement agency shall notify each school or day care facility that has maintained flagged records for the child and the bureau of vital statistics that the child is no longer missing. The law enforcement agency shall notify the clearinghouse that notification under this section has been made. The bureau of vital statistics shall notify the appropriate municipal or county birth certificate agency. The clearinghouse shall notify the school, day care facility, or bureau of vital statistics that the missing child is no longer missing if the clearinghouse determines that the notification was not provided by the law enforcement agency.
- (b) On notification by the law enforcement agency or the clearinghouse that a missing child has been recovered, the school, day care facility, or birth certificate agency that maintained flagged records shall remove the flag from the records.
- (c) A school, day care facility, or birth certificate agency that has reason to believe a missing child has been recovered may request confirmation that the missing child has been recovered from the appropriate law enforcement agency or the clearinghouse. If a response is not received after the 45th day after the date of the request for confirmation, the school, day care facility, or birth certificate agency may remove the flag from the record and shall inform the law enforcement agency or the clearinghouse that the flag has been removed.

**SUBCHAPTER B ❖ UNIVERSITY OF NORTH TEXAS HEALTH SCIENCE CENTER  
AT FORT WORTH MISSING PERSONS DNA DATABASE**

**CCP §63.051 ❖ DEFINITIONS** In this subchapter:

- (1) “Board” means the board of regents of the University of North Texas System.
- (2) “Center” means the University of North Texas Health Science Center at Fort Worth.
- (3) “DNA” means deoxyribonucleic acid.
- (4) “DNA database” means the database containing forensic DNA analysis results, including any known name of the person who is the subject of the forensic DNA analysis, that is maintained by the center.
- (5) “High-risk missing person” means:
  - (A) a person missing as a result of an abduction by a stranger;
  - (B) a person missing under suspicious or unknown circumstances; or
  - (C) a person who has been missing more than 30 days, or less than 30 days at the discretion of the investigating agency, if there is reason to believe that the person is in danger or deceased.
- (6) “Law enforcement agency” means the law enforcement agency primarily responsible for investigating a report of a high-risk missing person.

**CCP §63.0515 ❖ CRIMINAL JUSTICE AGENCY**

For purposes of this subchapter, the center is a criminal justice agency that performs forensic DNA analyses on evidence, including evidence related to a case involving unidentified human remains or a high-risk missing person. The center shall comply with 42 U.S.C. Section 14132.

**CCP §63.052 ❖ ESTABLISHMENT OF DNA DATABASE FOR MISSING OR UNIDENTIFIED PERSONS**

- (a) The board shall develop at the University of North Texas Health Science Center at Fort Worth a DNA database for any case based on the report of unidentified human remains or a report of a high-risk missing person.
- (b) The database may be used to identify unidentified human remains and high-risk missing persons.
- (c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 320, Sec. 3, eff. June 17, 2011.

**CCP §63.053 ❖ INFORMATION STORED IN DATABASE**

- (a) The database required in Article 63.052 may contain only DNA genetic markers that are commonly recognized as

appropriate for human identification. Except to the extent that those markers are appropriate for human identification, the database may not contain DNA genetic markers that predict biological function. The center shall select the DNA genetic markers for inclusion in the DNA database based on existing technology for forensic DNA analysis.

- (b) The results of the forensic DNA analysis must be compatible with the CODIS DNA database established by the Federal Bureau of Investigation and the center must make the results available for inclusion in that database.

#### **CCP §63.054 ❖ COMPARISON OF SAMPLES**

The center shall compare DNA samples taken from unidentified human remains with DNA samples taken from personal articles belonging to high-risk missing persons or from parents of high-risk missing persons or other appropriate persons.

#### **CCP §63.055 ❖ STANDARDS COLLECTION; STORAGE**

In consultation with the center, the board by rule shall develop standards and guidelines for the collection of DNA samples submitted to the center and the center's storage of DNA samples.

#### **CCP §63.056 ❖ COLLECTION OF SAMPLES FROM UNIDENTIFIED HUMAN REMAINS**

- (a) A physician acting on the request of a justice of the peace under Subchapter A, Chapter 49, a county coroner, a county medical examiner, or other law enforcement entity, as appropriate, shall collect samples from unidentified human remains. The justice of the peace, coroner, medical examiner, or other law enforcement entity shall submit those samples to the center for forensic DNA analysis and inclusion of the results in the DNA database.
- (b) After the center has performed the forensic DNA analysis, the center shall return the remaining sample to the entity that submitted the sample under Subsection (a)

#### **CCP §63.057 ❖ DUTY OF LAW ENFORCEMENT AGENCY TO NOTIFY APPROPRIATE PERSONS REGARDING PROVISION OF VOLUNTARY SAMPLE**

Not later than the 30th day after the date a report of a high-risk missing person is filed, the law enforcement agency shall inform a parent or any other person considered appropriate by the agency that the person may provide:

- (1) a DNA sample for forensic DNA analysis; or
- (2) for purposes of DNA sampling, a personal article belonging to the high-risk missing person.

#### **CCP §63.058 ❖ RELEASE FORM**

- (a) The center shall develop a standard release form that authorizes a parent or other appropriate person to voluntarily provide under Article 63.057 a DNA sample or a personal article for purposes of DNA sampling. The release must explain that the DNA sample is to be used only to identify the high-risk missing person.
- (b) A law enforcement agency may not use any form of incentive or coercion to compel the parent or other appropriate person to provide a sample or article under this subchapter.

#### **CCP §63.059 ❖ PROTOCOL FOR OBTAINING SAMPLES RELATING TO HIGH-RISK MISSING PERSONS**

- (a) The law enforcement agency shall take DNA samples from parents or other appropriate persons under Article 63.057 in any manner prescribed by the center.
- (b) The center shall develop a model kit to be used by a law enforcement agency to take DNA samples from parents or other appropriate persons.

#### **CCP §63.060 ❖ SUBMISSION OF SAMPLE TO CENTER**

- (a) Before submitting to the center a DNA sample obtained under Article 63.057, the law enforcement agency shall reverify the status of a high-risk missing person.
- (b) As soon as practicable after a DNA sample is obtained, the law enforcement agency shall submit the DNA sample, a copy of the missing person's report, and any supplemental information to the center.

#### **CCP §63.061 ❖ DESTRUCTION OF SAMPLES**

All DNA samples extracted from a living person shall be destroyed after a positive identification is made and a report is issued.

**CCP §63.062 ❖ CONFIDENTIALITY**

- (a) Except as provided by Subsection (b), the results of a forensic DNA analysis performed by the center are confidential.
- (b) The center may disclose the results of a forensic DNA analysis only to:
  - (1) personnel of the center;
  - (2) law enforcement agencies;
  - (3) justices of the peace, coroners, medical examiners, or other law enforcement entities submitting a sample to the center under Article 63.056;
  - (4) attorneys representing the state; and
  - (5) a parent or other appropriate person voluntarily providing a DNA sample or an article under Article 63.057.

**CCP §63.063 ❖ CRIMINAL PENALTY**

- (a) A person who collects, processes, or stores a DNA sample from a living person for forensic DNA analysis under this subchapter commits an offense if the person intentionally violates Article 63.061 or 63.062.
- (b) An offense under this section is a Class B misdemeanor.

**CCP §63.064 ❖ CIVIL PENALTY**

A person who collects, processes, or stores a DNA sample from a living person for forensic DNA analysis under this subchapter and who intentionally violates Article 63.061 or 63.062 is liable in civil damages to the donor of the DNA in the amount of \$5,000 for each violation, plus reasonable attorney's fees and court costs.

**CCP §63.065 ❖ MISSING PERSONS DNA DATABASE FUND**

- (a) The missing persons DNA database fund is a separate account in the general revenue fund.
- (b) Notwithstanding Article 56.54(g), the legislature may appropriate money in the compensation to victims of crime fund and the compensation to victims of crime auxiliary fund to fund the University of North Texas Health Science Center at Fort Worth missing persons DNA database. Legislative appropriations under this subsection shall be deposited to the credit of the account created under Subsection (a).
- (c) Money in the account may be used only for purposes of developing and maintaining the DNA database as described by this section.
- (d) The center may use money in the account only to:
  - (1) establish and maintain center infrastructure;
  - (2) pay the costs of DNA sample storage, forensic DNA analysis, and labor costs for cases of high-risk missing persons and unidentified human remains;
  - (3) reimburse counties for the purposes of pathology and exhumation as considered necessary by the center;
  - (4) publicize the DNA database for the purpose of contacting parents and other appropriate persons so that they may provide a DNA sample or a personal article for DNA sampling;
  - (5) educate law enforcement officers about the DNA database and DNA sampling; and
  - (6) provide outreach programs related to the purposes of this chapter.
- (e) Section 403.095(b), Government Code, does not apply to the account established under Subsection (a).

**CCP §63.066 ❖ BACKLOG OF UNIDENTIFIED HUMAN REMAINS: ADVISORY COMMITTEE AND OUTSOURCING**

- (a) The center shall create an advisory committee, consisting of medical examiners, law enforcement officials, and other interested persons as determined appropriate by the center, to impose priorities regarding the identification of the backlog of high-risk missing person cases and unidentified human remains.
- (b) The center shall use any available federal funding to assist in reducing the backlog of high-risk missing person cases and unidentified human remains.
- (c) The reduction of the backlog may be outsourced to other appropriate laboratories at the center's discretion.

**CHAPTER 25 ❖ ADMISSION, TRANSFER, AND ATTENDANCE****EDC §25.002 ❖ REQUIREMENTS FOR ENROLLMENT**

- (a) If a parent or other person with legal control of a child under a court order enrolls the child in a public school, the parent or other person or the school district in which the child most recently attended school shall furnish to the school district:
- (1) the child's birth certificate or another document suitable as proof of the child's identity;
  - (2) a copy of the child's records from the school the child most recently attended if the child has been previously enrolled in a school in this state or another state; and
  - (3) a record showing that the child has the immunizations as required under Section 38.001, in the case of a child required under that section to be immunized, proof as required by that section showing that the child is not required to be immunized, or proof that the child is entitled to provisional admission under that section and under rules adopted under that section.
- (a-1) Information a school district furnishes under Subsections (a)(1) and (2) must be furnished by the district not later than the 10th working day after the date a request for the information is received by the district. Information a parent or other person with legal control of a child under a court order furnishes under Subsections (a)(1) and (2) must be furnished by the parent or other person not later than the 30th day after the date a child is enrolled in a public school. If a parent or other person with legal control of a child under a court order requests that a district transfer a child's student records, the district to which the request is made shall notify the parent or other person as soon as practicable that the parent or other person may request and receive an unofficial copy of the records for delivery in person to a school in another district.
- (b) If a child is enrolled under a name other than the child's name as it appears in the identifying document or records, the school district shall notify the missing children and missing persons information clearinghouse of the child's name as shown on the identifying document or records and the name under which the child is enrolled. The information in the notice is confidential and may be released only to a law enforcement agency.
- (c) If the information required by Subsection (a) is not furnished to the district within the period provided by that subsection, the district shall notify the police department of the municipality or sheriff's department of the county in which the district is located and request a determination of whether the child has been reported as missing.
- (d) When accepting a child for enrollment, the school district shall inform the parent or other person enrolling the child that presenting a false document or false records under this section is an offense under Section 37.10, Penal Code, and that enrollment of the child under false documents subjects the person to liability for tuition or costs under Section 25.001(h).
- (e) A person commits an offense if the person enrolls a child in a public school and fails to furnish an identifying document or record relating to the child on the request of a law enforcement agency conducting an investigation in response to a notification under Subsection (c). An offense under this subsection is a Class B misdemeanor.
- (f) Except as otherwise provided by this subsection, for a child to be enrolled in a public school, the child must be enrolled by the child's parent or by the child's guardian or other person with legal control of the child under a court order. A school district shall record the name, address, and date of birth of the person enrolling a child.
- (g) A school district shall accept a child for enrollment in a public school without the documentation required by Subsection (a) if the Department of Protective and Regulatory Services has taken possession of the child under Chapter 262, Family Code. The Department of Protective and Regulatory Services shall ensure that the documentation required by Subsection (a) is furnished to the school district not later than the 30th day after the date the child is enrolled in the school.

**CHAPTER 33 ❖ SERVICE PROGRAMS AND EXTRACURRICULAR ACTIVITIES****EDC §33.051 ❖ DEFINITIONS** In this subchapter:

- (1) "Child" and "minor" have the meanings assigned by Section 101.003, Family Code.
- (2) "Missing child" means a child whose whereabouts are unknown to the legal custodian of the child and:
  - (A) the circumstances of whose absence indicate that the child did not voluntarily leave the care and control of the custodian and that the taking of the child was not authorized by law; or
  - (B) the child has engaged in conduct indicating a need for supervision under Section 51.03(b)(3), Family Code.

### **EDC §33.052 ❖ MISSING CHILD PREVENTION AND IDENTIFICATION PROGRAMS**

- (a) The board of trustees of a school district or of a private school may participate in missing child prevention and identification programs, including fingerprinting and photographing as provided by this subchapter.
- (b) The board of trustees of a school district may delegate responsibility for implementation of the program to the district's school administration or to the district's community education services administration.
- (c) The chief administrative officer of each private primary or secondary school may participate in the programs and may contract with the regional education service center in which the school is located for operation of all or any part of the program through a shared services arrangement.

### **EDC §33.053 ❖ FINGERPRINTS OF CHILDREN**

- (a) A missing child prevention and identification program may include a procedure for taking the fingerprints of each student registered in the school whose parent or legal custodian has consented in writing to the fingerprinting. Fingerprints obtained under this section may be used only for the identification and location of a missing child.
- (b) The board of trustees of a school district or the chief administrative officer of a private school may establish a reasonable fee to cover the costs of fingerprinting not provided by volunteer assistance. The fee may not exceed \$3 for each child fingerprinted. If the school charges a fee, the school may waive all or a portion of the costs of fingerprinting for educationally disadvantaged children.
- (c) A representative of a law enforcement agency of the county or the municipality in which the school district is located or of the Department of Public Safety, or a person trained in fingerprinting technique by a law enforcement agency or the Department of Public Safety, shall make one complete set of fingerprints on a fingerprint card for each child participating in the program. If the school requests, the Department of Public Safety may provide fingerprint training to persons designated by the school.
- (d) A fingerprint card shall include a description of the child, including the name, address, date and place of birth, color of eyes and hair, weight, and sex of the child.
- (e) Except as provided by Section 33.054(b), the fingerprint card and other materials developed under this subchapter shall be made part of the school's permanent student records.
- (f) A state agency, law enforcement agency, or other person may not retain a copy of a child's fingerprints taken under this program.

### **EDC §33.054 ❖ PHOTOGRAPHS OF CHILDREN**

- (a) A participating school shall retain a current photograph of each child registered in the school whose parent or legal custodian has consented in writing. Photographs retained under this section may be used only for the identification and location of a missing child.
- (b) The photograph shall be retained by the participating school until the photograph is replaced by a subsequently made photograph under this section or until the expiration of three years, whichever is earlier.
- (c) On the request of a parent or legal custodian of a missing child, or of a peace officer who is engaged in the investigation of a missing child, a participating school may give to the parent, legal custodian, or peace officer a copy of that child's photograph held by the school under this section. Except as provided by this subsection, a photograph held under this section may not be given to any person.
- (d) A participating school may charge a fee for making and keeping records of photographs under this section. If the school charges a fee, the school may waive this fee for educationally disadvantaged children.

### **EDC §33.055 ❖ FINGERPRINTS AND PHOTOGRAPHS NOT USED AS EVIDENCE**

- (a) A child's fingerprint card made under Section 33.053 or a photograph of a child made or kept under Section 33.054 may not be used as evidence in any criminal proceeding in which the child is a defendant or in any case under Title 3, Family Code, in which the child is alleged to have engaged in delinquent conduct or in conduct indicating a need for supervision.
- (b) This subchapter does not apply to the use by a law enforcement agency for an official purpose of a photograph published in a school annual.
- (c) This subchapter does not prevent the use of a videotape or photograph taken to monitor the activity of students for disciplinary reasons or in connection with a criminal prosecution or an action under Title 3, Family Code.

### **EDC §33.057 ❖ DESTRUCTION OF FINGERPRINTS AND PHOTOGRAPHS**

The agency shall adopt rules relating to the destruction of fingerprints and photographs made or kept under this subchapter.

**CHAPTER 58 ❖ RECORDS; JUVENILE JUSTICE INFORMATION SYSTEM**

**FC §58.002 ❖ PHOTOGRAPHS AND FINGERPRINTS OF CHILDREN**

(c) This section does not prohibit a law enforcement officer from photographing or fingerprinting a child who is not in custody if the child's parent or guardian voluntarily consents in writing to the photographing or fingerprinting of the child . . .

**FC §58.007 ❖ PHYSICAL RECORDS OR FILES**

(f) If a child has been reported missing by a parent, guardian, or conservator of that child, information about the child may be forwarded to and disseminated by the Texas Crime Information Center and the National Crime Information Center.

**CHAPTER 60 ❖ UNIFORM INTERSTATE COMPACT ON JUVENILES**

**FC §60.001 ❖ DEFINITIONS** In this chapter:

- (1) "Commission" means the Interstate Commission for Juveniles.
- (2) "Compact" means the Interstate Compact for Juveniles.
- (3) "Compact administrator" has the meaning assigned by Article II of the compact.

*Amended effective Sept. 1, 2005 (HB 706, §2.01). Section 3.03(a) of HB 706 provides: ". . . [T]his Act takes effect on the day on which the Interstate Compact for Juveniles takes effect, which according to the terms of the compact is the later of July 1, 2004, or the day on which the compact is enacted into law by the 35th state, as defined by the compact."*

**FC §60.002 ❖ EXECUTION OF INTERSTATE COMPACT** *Repealed effective Sept. 1, 2005 (HB 706, §3.02).  
Now see §60.010*

**FC §60.003 ❖ EXECUTION OF ADDITIONAL ARTICLE** *Repealed effective Sept. 1, 2005 (HB 706, §3.02).*

**FC §60.004 ❖ EXECUTION OF AMENDMENT** *Repealed effective Sept. 1, 2005 (HB 706, §3.02).*

**FC §60.005 ❖ JUVENILE COMPACT ADMINISTRATOR**

Under the compact, the governor may designate an officer as the compact administrator. The administrator, acting jointly with like officers of other party states, shall adopt regulations to carry out more effectively the terms of the compact. The compact administrator serves at the pleasure of the governor. The compact administrator shall cooperate with all departments, agencies, and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of a supplementary agreement entered into by this state.

**FC §60.006 ❖ SUPPLEMENTARY AGREEMENTS**

A compact administrator may make supplementary agreements with appropriate officials of other states pursuant to the compact. If a supplementary agreement requires or contemplates the use of an institution or facility of this state or requires or contemplates the provision of a service of this state, the supplementary agreement has no force or effect until approved by the head of the department or agency under whose jurisdiction the institution is operated, or whose department or agency is charged with performing the service.

**FC §60.007 ❖ FINANCIAL ARRANGEMENTS**

The compact administrator may make or arrange for the payments necessary to discharge the financial obligations imposed upon this state by the compact or by a supplementary agreement made under the compact, subject to legislative appropriations.

**FC §60.008 ❖ ENFORCEMENT**

The courts, departments, agencies, and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to effectuate its purposes and intent which are within their respective jurisdictions.

## **FC §60.009 ❖ ADDITIONAL PROCEDURES NOT PRECLUDED**

In addition to any procedures developed under the compact for the return of a runaway juvenile, the particular states, the juvenile, or his parents, the courts, or other legal custodian involved may agree upon and adopt any plan or procedure legally authorized under the laws of this state and the other respective party states for the return of the runaway juvenile.

*Amended effective Sept. 1, 2005 (HB 706, §2.01). Section 3.03(a) of HB 706 provides: “. . . [T]his Act takes effect on the day on which the Interstate Compact for Juveniles takes effect, which according to the terms of the compact is the later of July 1, 2004, or the day on which the compact is enacted into law by the 35th state, as defined by the compact.”*

## **FC §60.010 ❖ INTERSTATE COMPACT FOR JUVENILES**

### **ARTICLE I PURPOSE**

The compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

It is the purpose of this compact, through means of joint and cooperative action among the compacting states to:

- (A) ensure that the juveniles who are moved under this compact to another state for probation or parole supervision and services are governed in the receiving state by the same standards that apply to juveniles receiving such supervision and services in the receiving state;
- (B) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected and balanced with the juvenile's and the juvenile's family's best interests and welfare when an interstate movement is under consideration;
- (C) return juveniles who have run away, absconded, or escaped from supervision or control or have been accused of an offense to the state requesting their return through a fair and prompt judicial review process that ensures that the requisition is in order and that the transport is properly supervised;
- (D) make provisions for contracts between member states for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services;
- (E) provide for the effective tracking of juveniles who move interstate under the compact's provisions;
- (F) equitably allocate the costs, benefits, and obligations of the compacting states;
- (G) establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency which has jurisdiction over juvenile offenders, ensuring that a receiving state accepts supervision of a juvenile when the juvenile's parent or other person having legal custody resides or is undertaking residence there;
- (H) ensure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;
- (I) establish a system of uniform data collection on information pertaining to juveniles who move interstate under this compact that prevents public disclosure of identity and individual treatment information but allows access by authorized juvenile justice and criminal justice officials and regular reporting of compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators;
- (J) monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance;
- (K) coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and
- (L) coordinate the implementation and operation of the compact with the Interstate Compact for the Placement of Children, the Interstate Compact for Adult Offender Supervision and other compacts affecting juveniles particularly in those cases where concurrent or overlapping supervision issues arise. It is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.



## **ARTICLE II DEFINITIONS**

As used in this compact, unless the context clearly requires a different construction:

- (A) “Bylaws” means those bylaws established by the Interstate Commission for its governance or for directing or controlling the Interstate Commission’s actions or conduct.
- (B) “Compact administrator” means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state’s supervision and transfer of juveniles subject to the terms of this compact and to the rules adopted by the Interstate Commission under this compact.
- (C) “Compacting state” means any state which has enacted the enabling legislation for this compact.
- (D) “Commissioner” means the voting representative of each compacting state appointed pursuant to Article III of this compact.
- (E) “Court” means any court having jurisdiction over delinquent, neglected, or dependent children.
- (F) “Deputy compact administrator” means the individual, if any, in each compacting state appointed to act on behalf of a compact administrator pursuant to the terms of this compact, responsible for the administration and management of the state’s supervision and transfer of juveniles subject to the terms of this compact and to the rules adopted by the Interstate Commission under this compact.
- (G) “Interstate Commission” means the Interstate Commission for Juveniles created by Article III of this compact.
- (H) “Juvenile” means any person defined as a juvenile in any member state or by the rules of the Interstate Commission, including:
  - (1) Accused Delinquent—a person charged with an offense that, if committed by an adult, would be a criminal offense;
  - (2) Adjudicated Delinquent—a person found to have committed an offense that, if committed by an adult, would be a criminal offense;
  - (3) Accused Status Offender—a person charged with an offense that would not be a criminal offense if committed by an adult;
  - (4) Adjudicated Status Offender—a person found to have committed an offense that would not be a criminal offense if committed by an adult; and
  - (5) Nonoffender—a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.
- (I) “Noncompacting state” means any state which has not enacted the enabling legislation for this compact.
- (J) “Probation or parole” means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.
- (K) “Rule” means a written statement by the Interstate Commission promulgated pursuant to Article VI of this compact that is of general applicability, implements, interprets, or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the Interstate Commission, and has the force and effect of statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule.
- (L) “State” means a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

## **ARTICLE III INTERSTATE COMMISSION FOR JUVENILES**

- (A) The compacting states hereby create the Interstate Commission for Juveniles. The Interstate Commission shall be a body corporate and joint agency of the compacting states. The commission shall have all the responsibilities, powers, and duties set forth herein, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.
- (B) The Interstate Commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state. The commissioner shall be the compact administrator, deputy compact administrator, or designee from that state who shall serve on the Interstate Commission in such capacity under or pursuant to the applicable law of the compacting state.
- (C) In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners, but who are members of interested organizations. Such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, Interstate Compact for Adult Offender Supervision, Interstate Compact for the Placement of Children, juvenile justice and juvenile corrections officials, and crime victims. All noncommissioner members of the Interstate Commission shall be ex officio (nonvoting) members. The Interstate Commission may provide in its bylaws for such additional ex officio (nonvoting) members, including members of other national organizations, in such numbers as shall be determined by the commission.

- (D) Each compacting state represented at any meeting of the Interstate Commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.
- (E) The Interstate Commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.
- (F) The Interstate Commission shall establish an executive committee, which shall include commission officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking or amendment to the compact. The executive committee shall oversee the day-to-day activities of the administration of the compact managed by an executive director and Interstate Commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws and rules, and performs such other duties as directed by the Interstate Commission or set forth in the bylaws.
- (G) Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.
- (H) The Interstate Commission's bylaws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.
- (I) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and any of its committees may close a meeting to the public when it determines by two-thirds vote that an open meeting would be likely to:
  - (1) Relate solely to the Interstate Commission's internal personnel practices and procedures;
  - (2) Disclose matters specifically exempted from disclosure by statute;
  - (3) Disclose trade secrets or commercial or financial information which is privileged or confidential;
  - (4) Involve accusing any person of a crime or formally censuring any person;
  - (5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
  - (6) Disclose investigative records compiled for law enforcement purposes;
  - (7) Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the Interstate Commission with respect to a regulated person or entity for the purpose of regulation or supervision of such person or entity;
  - (8) Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or
  - (9) Specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.
- (J) For every meeting closed pursuant to this provision, the Interstate Commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefore, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.
- (K) The Interstate Commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules which shall specify the data to be collected, the means of collection and data exchange, and reporting requirements. Such methods of data collection, exchange, and reporting shall insofar as is reasonably possible conform to up-to-date technology and coordinate the Interstate Commission's information functions with the appropriate repository of records.

**ARTICLE IV  
POWERS AND DUTIES OF THE INTERSTATE COMMISSION**

The commission shall have the following powers and duties:

- (1) To provide for dispute resolution among compacting states.
- (2) To promulgate rules to effect the purposes and obligations as enumerated in this compact, which shall have

the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

- (3) To oversee, supervise, and coordinate the interstate movement of juveniles subject to the terms of this compact and any bylaws adopted and rules promulgated by the Interstate Commission.
- (4) To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process.
- (5) To establish and maintain offices which shall be located within one or more of the compacting states.
- (6) To purchase and maintain insurance and bonds.
- (7) To borrow, accept, hire, or contract for services of personnel.
- (8) To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III of this compact, which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.
- (9) To elect or appoint officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications, and to establish the Interstate Commission's personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation, and qualifications of personnel.
- (10) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of same.
- (11) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, whether real, personal, or mixed.
- (12) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, whether real, personal, or mixed.
- (13) To establish a budget and make expenditures and levy dues as provided in Article VIII of this compact.
- (14) To sue and be sued.
- (15) To adopt a seal and bylaws governing the management and operation of the Interstate Commission.
- (16) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.
- (17) To report annually to the legislatures, governors, and judiciary of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.
- (18) To coordinate education, training, and public awareness regarding the interstate movement of juveniles for officials involved in such activity.
- (19) To establish uniform standards of the reporting, collecting, and exchanging of data.
- (20) The Interstate Commission shall maintain its corporate books and records in accordance with the bylaws.

## **ARTICLE V ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION**

### **Sec. A. Bylaws**

- (1) The Interstate Commission shall, by a majority of the members present and voting, within 12 months of the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:
  - (a) Establishing the fiscal year of the Interstate Commission;
  - (b) Establishing an executive committee and such other committees as may be necessary;
  - (c) Providing for the establishment of committees governing any general or specific delegation of any authority or function of the Interstate Commission;
  - (d) Providing reasonable procedures for calling and conducting meetings of the Interstate Commission and ensuring reasonable notice of each such meeting;
  - (e) Establishing the titles and responsibilities of the officers of the Interstate Commission;
  - (f) Providing a mechanism for concluding the operations of the Interstate Commission and the return of any surplus funds that may exist upon the termination of the compact after the payment or reserving of all of its debts and obligations;
  - (g) Providing start-up rules for initial administration of the compact; and
  - (h) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

### **Sec. B. Officers and Staff**

- (1) The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice chairperson, each of whom shall have such authority and duties as may be specified

in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice chairperson shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission, provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

- (2) The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions, and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a member and shall hire and supervise such other staff as may be authorized by the Interstate Commission.

### **Sec. C. Qualified Immunity, Defense, and Indemnification**

- (1) The Interstate Commission's executive director and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of Interstate Commission employment, duties, or responsibilities, provided that any such person shall not be protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or wilful and wanton misconduct of any such person.
- (2) The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. Nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or wilful and wanton misconduct of any such person.
- (3) The Interstate Commission shall defend the executive director or the employees or representatives of the Interstate Commission and, subject to the approval of the attorney general of the state represented by any commissioner of a compacting state, shall defend such commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or wilful and wanton misconduct on the part of such person.
- (4) The Interstate Commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees, or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or wilful and wanton misconduct on the part of such persons.

## **ARTICLE VI RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION**

- (A) The Interstate Commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.
- (B) Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the "Model State Administrative Procedures Act," 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000), or such other administrative procedures act, as the Interstate Commission deems appropriate consistent with due process requirements under the United States Constitution as now or hereafter interpreted by the United States Supreme Court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the Interstate Commission.
- (C) When promulgating a rule, the Interstate Commission shall, at a minimum:
  - (1) Publish the proposed rule's entire text stating the reason or reasons for that proposed rule;
  - (2) Allow and invite persons to submit written data, facts, opinions, and arguments, which information shall be added to the record and be made publicly available;
  - (3) Provide an opportunity for an informal hearing, if petitioned by 10 or more persons; and
  - (4) Promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

- (D) Allow, not later than 60 days after a rule is promulgated, any interested person to file a petition in the United States District Court for the District of Columbia or in the federal district court where the Interstate Commission's principal office is located for judicial review of the rule. If the court finds that the Interstate Commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedures Act.
- (E) If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that such rule shall have no further force and effect in any compacting state.
- (F) The existing rules governing the operation of the Interstate Compact on Juveniles superceded by this Act shall be null and void 12 months after the first meeting of the Interstate Commission created under this compact.
- (G) Upon determination by the Interstate Commission that an emergency exists, the Interstate Commission may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, but no later than 90 days after the effective date of the emergency rule.

## **ARTICLE VII OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION**

### **Sec. A. Oversight**

- (1) The Interstate Commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.
- (2) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the Interstate Commission, the Interstate Commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

### **Sec. B. Dispute Resolution**

- (1) The compacting states shall report to the Interstate Commission on all issues and activities necessary for the administration of the compact as well as issues and activities pertaining to compliance with the provisions of the compact and its bylaws and rules.
- (2) The Interstate Commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and between compacting and noncompacting states. The Interstate Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.
- (3) The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in Article X of this compact.

## **ARTICLE VIII FINANCE**

- (A) The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.
- (B) The Interstate Commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state. The Interstate Commission shall promulgate a rule binding upon all compacting states that governs said assessment.
- (C) The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same, nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

- (D) The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

## **ARTICLE IX COMPACTING STATES, EFFECTIVE DATE, AND AMENDMENT**

- (A) Any state, as defined in Article II of this compact, is eligible to become a compacting state.
- (B) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2004, or upon enactment into law by the 35th jurisdiction. Thereafter, the compact shall become effective and binding, as to any other compacting state, upon enactment of the compact into law by that state. The governors of noncompacting states or their designees shall be invited to participate in Interstate Commission activities on a nonvoting basis prior to adoption of the compact by all states.
- (C) The Interstate Commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

## **ARTICLE X WITHDRAWAL, DEFAULT, TERMINATION, AND JUDICIAL ENFORCEMENT**

### **Sec. A. Withdrawal**

- (1) Once effective, the compact shall continue in force and remain binding upon each and every compacting state, provided that a compacting state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.
- (2) The effective date of withdrawal is the effective date of the repeal.
- (3) The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within 60 days of its receipt thereof.
- (4) The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.
- (5) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

### **Sec. B. Technical Assistance, Fines, Suspension, Termination, and Default**

- (1) If the Interstate Commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the bylaws or duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:
  - (a) Remedial training and technical assistance as directed by the Interstate Commission;
  - (b) Alternative dispute resolution;
  - (c) Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission; and
  - (d) Suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the Interstate Commission has determined that the offending state is in default. Immediate notice of suspension shall be given by the Interstate Commission to the governor, the chief justice or the chief judicial officer of the state, and the majority and minority leaders of the defaulting state's legislature. The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, the bylaws or duly promulgated rules, and any other grounds designated in commission bylaws and rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission and of the default pending a cure of the default. The Interstate Commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the Interstate Commission, the defaulting state shall be terminated

from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination.

- (2) Within 60 days of the effective date of termination of a defaulting state, the Interstate Commission shall notify the governor, the chief justice or chief judicial officer of the state, and the majority and minority leaders of the defaulting state's legislature of such termination.
- (3) The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.
- (4) The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.
- (5) Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

### **Sec. C. Judicial Enforcement**

The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its offices, to enforce compliance with the provisions of the compact, its duly promulgated rules and bylaws, against any compacting state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

### **Sec. D. Dissolution of Compact**

- (1) The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one compacting state.
- (2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and any surplus funds shall be distributed in accordance with the bylaws.

## **ARTICLE XI SEVERABILITY AND CONSTRUCTION**

- (A) The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.
- (B) The provisions of this compact shall be liberally construed to effectuate its purposes.

## **ARTICLE XII BINDING EFFECT OF COMPACT AND OTHER LAWS**

### **Sec. A. Other Laws**

- (1) Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.
- (2) All compacting states' laws other than state constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

### **Sec. B. Binding Effect of the Compact**

- (1) All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the compacting states.
- (2) All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.
- (3) Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.
- (4) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

*Enacted effective Sept. 1, 2005 (HB 706, §1.01). Section 3.01 of HB 706 provides: "The governor shall publish notice of the implementation of the Interstate Compact for Juveniles in the Texas Register not later than the 30th day after the date the compact becomes effective under Article IX of the compact."*

#### **FC §60.011 ❖ EFFECT OF TEXAS LAWS**

If the laws of this state conflict with the compact, the compact controls, except that in the event of a conflict between the compact and the Texas Constitution, as determined by the courts of this state, the Texas Constitution controls.

*Enacted effective Sept. 1, 2005 (HB 706, §2.02). Section 3.03(a) of HB 706 provides: "[T]his Act takes effect on the day on which the Interstate Compact for Juveniles takes effect, which according to the terms of the compact is the later of July 1, 2004, or the day on which the compact is enacted into law by the 35th state, as defined by the compact."*

#### **FC §60.012 ❖ LIABILITIES FOR CERTAIN COMMISSION AGENTS**

The compact administrator and each member, officer, executive director, employee, or agent of the commission acting within the scope of the person's employment or duties is, for the purpose of acts or omissions occurring within this state, entitled to the same protections under Chapter 104, Civil Practice and Remedies Code, as an employee, a member of the governing board, or any other officer of a state agency, institution, or department.

*Enacted effective Sept. 1, 2005 (HB 706, §2.02). Section 3.03(a) of HB 706 provides: "[T]his Act takes effect on the day on which the Interstate Compact for Juveniles takes effect, which according to the terms of the compact is the later of July 1, 2004, or the day on which the compact is enacted into law by the 35th state, as defined by the compact."*

## **CHAPTER 152 ❖ UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT**

### **SUBCHAPTER A ❖ APPLICATION AND CONSTRUCTION**

#### **FC §152.001. ❖ APPLICATION AND CONSTRUCTION**

This chapter shall be applied and construed to promote the uniformity of the law among the states that enact it.

#### **FC §152.002. ❖ CONFLICTS BETWEEN PROVISIONS**

If a provision of this chapter conflicts with a provision of this title or another statute or rule of this state and the conflict cannot be reconciled, this chapter prevails.

### **SUBCHAPTER B ❖ GENERAL PROVISIONS**

#### **FC §152.101 ❖ SHORT TITLE**

This chapter may be cited as the Uniform Child Custody Jurisdiction and Enforcement Act.

#### **FC §152.102 ❖ DEFINITIONS** In this chapter:

- (1) "Abandoned" means left without provision for reasonable and necessary care or supervision.
- (2) "Child" means an individual who has not attained 18 years of age.
- (3) "Child custody determination" means a judgment, decree, or other order of a court providing for legal custody, physical custody, or visitation with respect to a child. The term includes permanent, temporary, initial, and modification orders. The term does not include an order relating to child support or another monetary obligation of an individual.
- (4) "Child custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Subchapter D.
- (5) "Commencement" means the filing of the first pleading in a proceeding.
- (6) "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child custody determination.
- (7) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least



six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with a parent or a person acting as a parent. A period of temporary absence of a parent or a person acting as a parent is part of the period.

- (8) "Initial determination" means the first child custody determination concerning a particular child.
- (9) "Issuing court" means the court that makes a child custody determination for which enforcement is sought under this chapter.
- (10) "Issuing state" means the state in which a child custody determination is made.
- (11) "Legal custody" means the managing conservatorship of a child.
- (12) "Modification" means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.
- (13) "Person acting as a parent" means a person, other than a parent, who:
  - (A) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and
  - (B) has been awarded legal custody by a court or claims a right to legal custody under the law of this state.
- (14) "Physical custody" means the physical care and supervision of a child.
- (15) "Tribe" means an Indian tribe or band, or Alaskan Native village, that is recognized by federal law or formally acknowledged by a state.
- (16) "Visitation" means the possession of or access to a child.
- (17) "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

#### **FC §152.103 ❖ PROCEEDINGS GOVERNED BY OTHER LAW**

This chapter does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

#### **FC §152.104 ❖ APPLICATION TO INDIAN TRIBES**

- (a) A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act of 1978 (25 U.S.C. Section 1901 et seq.) is not subject to this chapter to the extent that it is governed by the Indian Child Welfare Act.
- (b) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying this subchapter and Subchapter C.
- (c) A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under Subchapter D.

#### **FC §152.105 ❖ INTERNATIONAL APPLICATION OF CHAPTER**

- (a) A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying this subchapter and Subchapter C.
- (b) Except as otherwise provided in Subsection (c), a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under Subchapter D.
- (c) A court of this state need not apply this chapter if the child custody law of a foreign country violates fundamental principles of human rights.

#### **FC §152.106 ❖ EFFECT OF CHILD CUSTODY DETERMINATION**

A child custody determination made by a court of this state that had jurisdiction under this chapter binds all persons who have been served in accordance with the laws of this state or notified in accordance with Section 152.108 or who have submitted to the jurisdiction of the court and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

#### **FC §152.107 ❖ PRIORITY**

If a question of existence or exercise of jurisdiction under this chapter is raised in a child custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

**FC §152.108 ❖ NOTICE TO PERSONS OUTSIDE STATE**

- (a) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.
- (b) Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.
- (c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

**FC §152.109 ❖ APPEARANCE AND LIMITED IMMUNITY**

- (a) A party to a child custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child custody determination, is not subject to personal jurisdiction in this state for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.
- (b) A person who is subject to personal jurisdiction in this state on a basis other than physical presence is not immune from service of process in this state. A party present in this state who is subject to the jurisdiction of another state is not immune from service of process allowed under the laws of that state.
- (c) The immunity granted by Subsection (a) does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this chapter committed by an individual while present in this state.

**FC §152.110 ❖ COMMUNICATION BETWEEN COURTS**

- (a) In this section, “record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (b) A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter.
- (c) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.
- (d) If proceedings involving the same parties are pending simultaneously in a court of this state and a court of another state, the court of this state shall inform the other court of the simultaneous proceedings. The court of this state shall request that the other court hold the proceeding in that court in abeyance until the court in this state conducts a hearing to determine whether the court has jurisdiction over the proceeding.
- (e) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.
- (f) Except as otherwise provided in Subsection (e), a record must be made of any communication under this section. The parties must be informed promptly of the communication and granted access to the record.

**FC §152.111 ❖ TAKING TESTIMONY IN ANOTHER STATE**

- (a) In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowed in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.
- (b) A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.
- (c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

**FC §152.112 ❖ COOPERATION BETWEEN COURTS; PRESERVATION OF RECORDS**

- (a) A court of this state may request the appropriate court of another state to:
  - (1) hold an evidentiary hearing;
  - (2) order a person to produce or give evidence pursuant to procedures of that state;
  - (3) order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;
  - (4) forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and

- (5) order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.
- (b) Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in Subsection (a).
- (c) Travel and other necessary and reasonable expenses incurred under Subsections (a) and (b) may be assessed against the parties according to the law of this state.
- (d) A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

## **SUBCHAPTER C ❖ JURISDICTION**

### **FC §152.201 ❖ INITIAL CHILD CUSTODY JURISDICTION**

- (a) Except as otherwise provided in Section 152.204, a court of this state has jurisdiction to make an initial child custody determination only if:
  - (1) this state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;
  - (2) a court of another state does not have jurisdiction under Subdivision (1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under Section 152.207 or 152.208, and:
    - (A) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and
    - (B) substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;
  - (3) all courts having jurisdiction under Subdivision (1) or (2) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Section 152.207 or 152.208; or
  - (4) no court of any other state would have jurisdiction under the criteria specified in Subdivision (1), (2), or (3).
- (b) Subsection (a) is the exclusive jurisdictional basis for making a child custody determination by a court of this state.
- (c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

### **FC §152.202 ❖ EXCLUSIVE CONTINUING JURISDICTION**

- (a) Except as otherwise provided in Section 152.204, a court of this state which has made a child custody determination consistent with Section 152.201 or 152.203 has exclusive continuing jurisdiction over the determination until:
  - (1) a court of this state determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent, have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or
  - (2) a court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.
- (b) A court of this state which has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under Section 152.201.

### **FC §152.203 ❖ JURISDICTION TO MODIFY DETERMINATION**

Except as otherwise provided in Section 152.204, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under Section 152.201(a)(1) or (2) and:

- (1) the court of the other state determines it no longer has exclusive continuing jurisdiction under Section 152.202 or that a court of this state would be a more convenient forum under Section 152.207; or
- (2) a court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

#### **FC §152.204 ❖ TEMPORARY EMERGENCY JURISDICTION**

- (a) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.
- (b) If there is no previous child custody determination that is entitled to be enforced under this chapter and a child custody proceeding has not been commenced in a court of a state having jurisdiction under Sections 152.201 through 152.203, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under Sections 152.201 through 152.203. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under Sections 152.201 through 152.203, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.
- (c) If there is a previous child custody determination that is entitled to be enforced under this chapter, or a child custody proceeding has been commenced in a court of a state having jurisdiction under Sections 152.201 through 152.203, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under Sections 152.201 through 152.203. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.
- (d) A court of this state which has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in or a child custody determination has been made by a court of a state having jurisdiction under Sections 152.201 through 152.203, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to Sections 152.201 through 152.203, upon being informed that a child custody proceeding has been commenced in or a child custody determination has been made by a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

#### **FC §152.205 ❖ NOTICE; OPPORTUNITY TO BE HEARD; JOINDER**

- (a) Before a child custody determination is made under this chapter, notice and an opportunity to be heard in accordance with the standards of Section 152.108 must be given to all persons entitled to notice under the law of this state as in child custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.
- (b) This chapter does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.
- (c) The obligation to join a party and the right to intervene as a party in a child custody proceeding under this chapter are governed by the law of this state as in child custody proceedings between residents of this state.

#### **FC §152.206 ❖ SIMULTANEOUS PROCEEDINGS**

- (a) Except as otherwise provided in Section 152.204, a court of this state may not exercise its jurisdiction under this subchapter if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this chapter, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under Section 152.207.
- (b) Except as otherwise provided in Section 152.204, a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to Section 152.209. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this chapter, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.
- (c) In a proceeding to modify a child custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:
  - (1) stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;
  - (2) enjoin the parties from continuing with the proceeding for enforcement; or
  - (3) proceed with the modification under conditions it considers appropriate.

### **FC §152.207 ❖ INCONVENIENT FORUM**

- (a) A court of this state which has jurisdiction under this chapter to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.
- (b) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:
  - (1) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
  - (2) the length of time the child has resided outside this state;
  - (3) the distance between the court in this state and the court in the state that would assume jurisdiction;
  - (4) the relative financial circumstances of the parties;
  - (5) any agreement of the parties as to which state should assume jurisdiction;
  - (6) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
  - (7) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
  - (8) the familiarity of the court of each state with the facts and issues in the pending litigation.
- (c) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, the court shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.
- (d) A court of this state may decline to exercise its jurisdiction under this chapter if a child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

### **FC §152.208 ❖ JURISDICTION DECLINED BY REASON OF CONDUCT**

- (a) Except as otherwise provided in Section 152.204 or other law of this state, if a court of this state has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:
  - (1) the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;
  - (2) a court of the state otherwise having jurisdiction under Sections 152.201 through 152.203 determines that this state is a more appropriate forum under Section 152.207; or
  - (3) no court of any other state would have jurisdiction under the criteria specified in Sections 152.201 through 152.203.
- (b) If a court of this state declines to exercise its jurisdiction pursuant to Subsection (a), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under Sections 152.201 through 152.203.
- (c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to Subsection (a), it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this state unless authorized by law other than this chapter.

### **FC §152.209 ❖ INFORMATION TO BE SUBMITTED TO COURT**

- (a) Except as provided by Subsection (e) or unless each party resides in this state, in a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:
  - (1) has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child custody determination, if any;
  - (2) knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding; and

- (3) knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.
- (b) If the information required by Subsection (a) is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.
- (c) If the declaration as to any of the items described in Subsections (a)(1) through (3) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.
- (d) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.
- (e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

**FC §152.210 ❖ APPEARANCE OF PARTIES AND CHILD**

- (a) In a child custody proceeding in this state, the court may order a party to the proceeding who is in this state to appear before the court in person with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear in person with the child.
- (b) If a party to a child custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to Section 152.108 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.
- (c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.
- (d) If a party to a child custody proceeding who is outside this state is directed to appear under Subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

**SUBCHAPTER D ❖ ENFORCEMENT**

**FC §152.301 ❖ DEFINITIONS** In this subchapter:

- (1) "Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.
- (2) "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

**FC §152.302 ❖ ENFORCEMENT UNDER HAGUE CONVENTION**

Under this subchapter a court of this state may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child custody determination.

**FC §152.303 ❖ DUTY TO ENFORCE**

- (a) A court of this state shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this chapter or the determination was made under factual circumstances meeting the jurisdictional standards of this chapter and the determination has not been modified in accordance with this chapter.
- (b) A court of this state may utilize any remedy available under other law of this state to enforce a child custody determination made by a court of another state. The remedies provided in this subchapter are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

**FC §152.304 ❖ TEMPORARY VISITATION**

- (a) A court of this state which does not have jurisdiction to modify a child custody determination may issue a temporary order enforcing:

- (1) a visitation schedule made by a court of another state; or
  - (2) the visitation provisions of a child custody determination of another state that does not provide for a specific visitation schedule.
- (b) If a court of this state makes an order under Subsection (a)(2), the court shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in Subchapter C. The order remains in effect until an order is obtained from the other court or the period expires.

#### **FC §152.305 ❖ REGISTRATION OF CHILD CUSTODY DETERMINATION**

- (a) A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the appropriate court in this state:
- (1) a letter or other document requesting registration;
  - (2) two copies, including one certified copy, of the determination sought to be registered and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and
  - (3) except as otherwise provided in Section 152.209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.
- (b) On receipt of the documents required by Subsection (a), the registering court shall:
- (1) cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and
  - (2) serve notice upon the persons named pursuant to Subsection (a)(3) and provide them with an opportunity to contest the registration in accordance with this section.
- (c) The notice required by Subsection (b)(2) must state that:
- (1) a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;
  - (2) a hearing to contest the validity of the registered determination must be requested within 20 days after service of notice; and
  - (3) failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.
- (d) A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:
- (1) the issuing court did not have jurisdiction under Subchapter C;
  - (2) the child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under Subchapter C; or
  - (3) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of Section 152.108, in the proceedings before the court that issued the order for which registration is sought.
- (e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.
- (f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

#### **FC §152.306 ❖ ENFORCEMENT OF REGISTERED DETERMINATION**

- (a) A court of this state may grant any relief normally available under the law of this state to enforce a registered child custody determination made by a court of another state.
- (b) A court of this state shall recognize and enforce, but may not modify, except in accordance with Subchapter C, a registered child custody determination of a court of another state.

#### **FC §152.307 ❖ SIMULTANEOUS PROCEEDINGS**

If a proceeding for enforcement under this subchapter is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under Subchapter C, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

### **FC §152.308 ❖ EXPEDITED ENFORCEMENT OF CHILD CUSTODY DETERMINATION**

- (a) A petition under this subchapter must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.
- (b) A petition for enforcement of a child custody determination must state:
  - (1) whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;
  - (2) whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this chapter and, if so, identify the court, the case number, and the nature of the proceeding;
  - (3) whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;
  - (4) the present physical address of the child and the respondent, if known;
  - (5) whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and
  - (6) if the child custody determination has been registered and confirmed under Section 152.305, the date and place of registration.
- (c) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.
- (d) An order issued under Subsection (c) must state the time and place of the hearing and advise the respondent that at the hearing the court will award the petitioner immediate physical custody of the child and order the payment of fees, costs, and expenses under Section 152.312, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:
  - (1) the child custody determination has not been registered and confirmed under Section 152.305 and that:
    - (A) the issuing court did not have jurisdiction under Subchapter C;
    - (B) the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under Subchapter C; or
    - (C) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 152.108, in the proceedings before the court that issued the order for which enforcement is sought; or
  - (2) the child custody determination for which enforcement is sought was registered and confirmed under Section 152.305, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Subchapter C.

### **FC §152.309 ❖ SERVICE OF PETITION AND ORDER**

Except as otherwise provided in Section 152.311, the petition and order must be served, by any method authorized by the law of this state, upon the respondent and any person who has physical custody of the child.

### **FC §152.310 ❖ HEARING AND ORDER**

- (a) Unless the court issues a temporary emergency order pursuant to Section 152.204, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:
  - (1) the child custody determination has not been registered and confirmed under Section 152.305 and that:
    - (A) the issuing court did not have jurisdiction under Subchapter C;
    - (B) the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Subchapter C; or
    - (C) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 152.108, in the proceedings before the court that issued the order for which enforcement is sought; or
  - (2) the child custody determination for which enforcement is sought was registered and confirmed under Section 152.305 but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Subchapter C.
- (b) The court shall award the fees, costs, and expenses authorized under Section 152.312 and may grant additional



relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

- (c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.
- (d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this subchapter.

#### **FC §152.311 ❖ WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD**

- (a) Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is imminently likely to suffer serious physical harm or be removed from this state.
- (b) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this state, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by Section 152.308(b).
- (c) A warrant to take physical custody of a child must:
  - (1) recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;
  - (2) direct law enforcement officers to take physical custody of the child immediately; and
  - (3) provide for the placement of the child pending final relief.
- (d) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.
- (e) A warrant to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.
- (f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

#### **FC §152.312 ❖ COSTS, FEES, AND EXPENSES**

- (a) The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.
- (b) The court may not assess fees, costs, or expenses against a state unless authorized by law other than this chapter.

#### **FC §152.313 ❖ RECOGNITION AND ENFORCEMENT**

A court of this state shall accord full faith and credit to an order issued by another state and consistent with this chapter which enforces a child custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under Subchapter C.

#### **FC §152.314 ❖ APPEALS**

An appeal may be taken from a final order in a proceeding under this subchapter in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under Section 152.204, the enforcing court may not stay an order enforcing a child custody determination pending appeal.

#### **FC §152.315 ❖ ROLE OF PROSECUTOR OR PUBLIC OFFICIAL**

- (a) In a case arising under this chapter or involving the Hague Convention on the Civil Aspects of International Child Abduction, the prosecutor or other appropriate public official may take any lawful action, including resorting to a proceeding under this subchapter or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child custody determination if there is:
  - (1) an existing child custody determination;
  - (2) a request to do so from a court in a pending child custody proceeding;
  - (3) a reasonable belief that a criminal statute has been violated; or
  - (4) a reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention

on the Civil Aspects of International Child Abduction.

- (b) A prosecutor or appropriate public official acting under this section acts on behalf of the court and may not represent any party.

#### **FC §152.316 ❖ ROLE OF LAW ENFORCEMENT**

At the request of a prosecutor or other appropriate public official acting under Section 152.315, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a prosecutor or appropriate public official with responsibilities under Section 152.315.

#### **FC §152.317 ❖ COSTS AND EXPENSES**

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor or other appropriate public official and law enforcement officers under Section 152.315 or 152.316.

## **CHAPTER 153 ❖ CONSERVATORSHIP, POSSESSION, AND ACCESS**

### **SUBCHAPTER I ❖ PREVENTION OF INTERNATIONAL PARENTAL CHILD ABDUCTION**

#### **FC §153.501 ❖ NECESSITY OF MEASURES TO PREVENT INTERNATIONAL PARENTAL CHILD ABDUCTION**

- (a) In a suit, if credible evidence is presented to the court indicating a potential risk of the international abduction of a child by a parent of the child, the court, on its own motion or at the request of a party to the suit, shall determine under this section whether it is necessary for the court to take one or more of the measures described by Section 153.503 to protect the child from the risk of abduction by the parent.
- (b) In determining whether to take any of the measures described by Section 153.503, the court shall consider:
- (1) the public policies of this state described by Section 153.001(a) and the consideration of the best interest of the child under Section 153.002;
  - (2) the risk of international abduction of the child by a parent of the child based on the court's evaluation of the risk factors described by Section 153.502;
  - (3) any obstacles to locating, recovering, and returning the child if the child is abducted to a foreign country; and
  - (4) the potential physical or psychological harm to the child if the child is abducted to a foreign country.

#### **FC §153.502 ❖ ABDUCTION RISK FACTORS**

- (a) To determine whether there is a risk of the international abduction of a child by a parent of the child, the court shall consider evidence that the parent:
- (1) has taken, enticed away, kept, withheld, or concealed a child in violation of another person's right of possession of or access to the child, unless the parent presents evidence that the parent believed in good faith that the parent's conduct was necessary to avoid imminent harm to the child;
  - (2) has previously threatened to take, entice away, keep, withhold, or conceal a child in violation of another person's right of possession of or access to the child;
  - (3) lacks financial reason to stay in the United States, including evidence that the parent is financially independent, is able to work outside of the United States, or is unemployed;
  - (4) has recently engaged in planning activities that could facilitate the removal of the child from the United States by the parent, including:
    - (A) quitting a job;
    - (B) selling a primary residence;
    - (C) terminating a lease;
    - (D) closing bank accounts;
    - (E) liquidating other assets;
    - (F) hiding or destroying documents;
    - (G) applying for a passport or visa for the parent or the child; or
    - (H) applying to obtain the child's birth certificate or school or medical records;
  - (5) has a history of domestic violence that the court is required to consider under Section 153.004; or
  - (6) has a criminal history or a history of violating court orders.
- (b) If the court finds that there is credible evidence of a risk of abduction of the child by a parent of the child based on the court's consideration of the factors in Subsection (a), the court shall also consider evidence regarding the

following factors to evaluate the risk of international abduction of the child by a parent:

- (1) whether the parent has strong familial, emotional, or cultural ties to another country, particularly a country that is not a signatory to or compliant with the Hague Convention on the Civil Aspects of International Child Abduction; and
  - (2) whether the parent lacks strong ties to the United States, regardless of whether the parent is a citizen or permanent resident of the United States.
- (c) If the court finds that there is credible evidence of a risk of abduction of the child by a parent of the child based on the court's consideration of the factors in Subsection (a), the court may also consider evidence regarding the following factors to evaluate the risk of international abduction of the child by a parent:
- (1) whether the parent is undergoing a change in status with the United States Immigration and Naturalization Service that would adversely affect that parent's ability to legally remain in the United States;
  - (2) whether the parent's application for United States citizenship has been denied by the United States Immigration and Naturalization Service;
  - (3) whether the parent has forged or presented misleading or false evidence to obtain a visa, a passport, a social security card, or any other identification card or has made any misrepresentation to the United States government; or
  - (4) whether the foreign country to which the parent has ties:
    - (A) presents obstacles to the recovery and return of a child who is abducted to the country from the United States;
    - (B) has any legal mechanisms for immediately and effectively enforcing an order regarding the possession of or access to the child issued by this state;
    - (C) has local laws or practices that would:
      - (i) enable the parent to prevent the child's other parent from contacting the child without due cause;
      - (ii) restrict the child's other parent from freely traveling to or exiting from the country because of that parent's gender, nationality, or religion; or
      - (iii) restrict the child's ability to legally leave the country after the child reaches the age of majority because of the child's gender, nationality, or religion;
    - (D) is included by the United States Department of State on a list of state sponsors of terrorism;
    - (E) is a country for which the United States Department of State has issued a travel warning to United States citizens regarding travel to the country;
    - (F) has an embassy of the United States in the country;
    - (G) is engaged in any active military action or war, including a civil war;
    - (H) is a party to and compliant with the Hague Convention on the Civil Aspects of International Child Abduction according to the most recent report on compliance issued by the United States Department of State;
    - (I) provides for the extradition of a parental abductor and the return of the child to the United States; or
    - (J) poses a risk that the child's physical health or safety would be endangered in the country because of specific circumstances relating to the child or because of human rights violations committed against children, including arranged marriages, lack of freedom of religion, child labor, lack of child abuse laws, female genital mutilation, and any form of slavery.

### **FC §153.503 ❖ ABDUCTION PREVENTION MEASURES**

If the court finds that it is necessary under Section 153.501 to take measures to protect a child from international abduction by a parent of the child, the court may take any of the following actions:

- (1) appoint a person other than the parent of the child who presents a risk of abducting the child as the sole managing conservator of the child;
- (2) require supervised visitation of the parent by a visitation center or independent organization until the court finds under Section 153.501 that supervised visitation is no longer necessary;
- (3) enjoin the parent or any person acting on the parent's behalf from:
  - (A) disrupting or removing the child from the school or child care facility in which the child is enrolled; or
  - (B) approaching the child at any location other than a site designated for supervised visitation;
- (4) order passport and travel controls, including controls that:
  - (A) prohibit the parent and any person acting on the parent's behalf from removing the child from this state or the United States;
  - (B) require the parent to surrender any passport issued in the child's name, including any passport issued in the name of both the parent and the child; and
  - (C) prohibit the parent from applying on behalf of the child for a new or replacement passport or international travel visa;
- (5) require the parent to provide:

- (A) to the United States Department of State's Office of Children's Issues and the relevant foreign consulate or embassy:
  - (i) written notice of the court ordered passport and travel restrictions for the child; and
  - (ii) a properly authenticated copy of the court order detailing the restrictions and documentation of the parent's agreement to the restrictions; and
- (B) to the court proof of receipt of the written notice required by Paragraph (A)(i) by the United States Department of State's Office of Children's Issues and the relevant foreign consulate or embassy;
- (6) order the parent to execute a bond or deposit security in an amount sufficient to offset the cost of recovering the child if the child is abducted by the parent to a foreign country;
- (7) authorize the appropriate law enforcement agencies to take measures to prevent the abduction of the child by the parent; or
- (8) include in the court's order provisions:
  - (A) identifying the United States as the country of habitual residence of the child;
  - (B) defining the basis for the court's exercise of jurisdiction; and
  - (C) stating that a party's violation of the order may subject the party to a civil penalty or criminal penalty or to both civil and criminal penalties.

## **CHAPTER 261 ❖ INVESTIGATION OF REPORT OF CHILD ABUSE OR NEGLECT**

### **FC §261.301 ❖ INVESTIGATION OF REPORT**

- (a) With assistance from the appropriate state or local law enforcement agency as provided by this section, the department or designated agency shall make a prompt and thorough investigation of a report of child abuse or neglect allegedly committed by a person responsible for a child's care, custody, or welfare. The investigation shall be conducted without regard to any pending suit affecting the parent-child relationship.
- (b) A state agency shall investigate a report that alleges abuse or neglect occurred in a facility operated, licensed, certified, or registered by that agency as provided by Subchapter E. In conducting an investigation for a facility operated, licensed, certified, registered, or listed by the department, the department shall perform the investigation as provided by:
  - (1) Subchapter E; and
  - (2) the Human Resources Code.
- (c) The department is not required to investigate a report that alleges child abuse or neglect by a person other than a person responsible for a child's care, custody, or welfare. The appropriate state or local law enforcement agency shall investigate that report if the agency determines an investigation should be conducted.
- (d) The department shall by rule assign priorities and prescribe investigative procedures for investigations based on the severity and immediacy of the alleged harm to the child. The primary purpose of the investigation shall be the protection of the child. The rules must require the department, subject to the availability of funds, to:
  - (1) immediately respond to a report of abuse and neglect that involves circumstances in which the death of the child or substantial bodily harm to the child would result unless the department immediately intervenes;
  - (2) respond within 24 hours to a report of abuse and neglect that is assigned the highest priority, other than a report described by Subdivision (1); and
  - (3) respond within 72 hours to a report of abuse and neglect that is assigned the second highest priority.
- (e) As necessary to provide for the protection of the child, the department or designated agency shall determine:
  - (1) the nature, extent, and cause of the abuse or neglect;
  - (2) the identity of the person responsible for the abuse or neglect;
  - (3) the names and conditions of the other children in the home;
  - (4) an evaluation of the parents or persons responsible for the care of the child;
  - (5) the adequacy of the home environment;
  - (6) the relationship of the child to the persons responsible for the care, custody, or welfare of the child; and
  - (7) all other pertinent data.
- (f) An investigation of a report to the department that alleges that a child has been or may be the victim of conduct that constitutes a criminal offense that poses an immediate risk of physical or sexual abuse of a child that could result in the death of or serious harm to the child shall be conducted jointly by a peace officer, as defined by Article 2.12, Code of Criminal Procedure, from the appropriate local law enforcement agency and the department or the agency responsible for conducting an investigation under Subchapter E.
- (g) The inability or unwillingness of a local law enforcement agency to conduct a joint investigation under this section does not constitute grounds to prevent or prohibit the department from performing its duties under this subtitle. The department shall document any instance in which a law enforcement agency is unable or unwilling to conduct a joint investigation under this section.

- (h) The department and the appropriate local law enforcement agency shall conduct an investigation, other than an investigation under Subchapter E, as provided by this section and Article 2.27, Code of Criminal Procedure, if the investigation is of a report that alleges that a child has been or may be the victim of conduct that constitutes a criminal offense that poses an immediate risk of physical or sexual abuse of a child that could result in the death of or serious harm to the child. Immediately on receipt of a report described by this subsection, the department shall notify the appropriate local law enforcement agency of the report.
- (i) If at any time during an investigation of a report of child abuse or neglect to which the department has assigned the highest priority the department is unable to locate the child who is the subject of the report of abuse or neglect or the child's family, the department shall notify the Department of Public Safety that the location of the child and the child's family is unknown. If the Department of Public Safety locates the child and the child's family, the Department of Public Safety shall notify the department of the location of the child and the child's family.

**FC §261.3022 ❖ CHILD SAFETY CHECK ALERT LIST**

- (a) The Department of Public Safety of the State of Texas shall maintain a child safety check alert list as part of the Texas Crime Information Center to help locate a child or the child's family for purposes of:
  - (1) investigating a report of child abuse or neglect;
  - (2) providing protective services to a family receiving family-based support services; or
  - (3) providing protective services to the family of a child in the managing conservatorship of the department.
- (b) If the department is unable to locate a child or the child's family for a purpose described by Subsection (a) after the department has attempted to locate the child for not more than 20 days, the department shall notify the Texas Department of Public Safety that the department is unable to locate the child or the child's family. The notice must include the information required by Subsections (c)(1)-(10).
- (c) On receipt of the notice from the department, the Texas Department of Public Safety shall notify the Texas Crime Information Center to place the child and the child's family on a child safety check alert list. The alert list must include the following information if known or readily available:
  - (1) the name, sex, race, date of birth, any known identifying numbers, including social security number and driver's license number, and personal descriptions of the family member alleged to have abused or neglected a child according to the report the department is attempting to investigate;
  - (2) the name, sex, race, date of birth, any known identifying numbers, including social security number and driver's license number, and personal descriptions of any parent, managing conservator, or guardian of the child who cannot be located for the purposes described by Subsection (a);
  - (3) the name, sex, race, date of birth, any known identifying numbers, including social security number and driver's license number, and personal descriptions of the child who is the subject of the report or is receiving services described by Subsection (a)(2) or (3);
  - (4) if applicable, a code identifying the type of child abuse or neglect alleged or determined to have been committed against the child;
  - (5) the family's last known address;
  - (6) any known description of the motor vehicle, including the vehicle's make, color, style of body, model year, and vehicle identification number, in which the child is suspected to be transported;
  - (7) the case number assigned by the department;
  - (8) the department's dedicated law-enforcement telephone number for statewide intake;
  - (9) the date and time when and the location where the child was last seen; and
  - (10) any other information required for an entry as established by the center.

**FC §261.3023 ❖ LAW ENFORCEMENT RESPONSE TO CHILD SAFETY CHECK ALERT**

If a law enforcement officer encounters a child or other person listed on the Texas Crime Information Center's child safety check alert list, the law enforcement officer shall follow the procedures described by Article 2.272, Code of Criminal Procedure.

**FC §261.3024 ❖ REMOVAL FROM CHILD SAFETY CHECK ALERT LIST**

- (a) A law enforcement officer who locates a child listed on the Texas Crime Information Center's child safety check alert list shall report that the child has been located in the manner prescribed by Article 2.272, Code of Criminal Procedure.
- (b) If the department locates a child who has been placed on the child safety check alert list established under Section 261.3022 through a means other than information reported to the department by a law enforcement officer under Article 2.272, Code of Criminal Procedure, the department shall report to the Texas Crime Information Center that the child has been located.

- (c) On receipt of notice that a child has been located, the Texas Crime Information Center shall remove the child and the child's family from the child safety check alert list.

#### **FC §261.3025. CHILD SAFETY CHECK ALERT LIST PROGRESS REPORT**

- (a) Not later than February 1 of each year, the Department of Public Safety, with the assistance of the department, shall prepare and submit a report on the use of the Texas Crime Information Center's child safety check alert list to the standing committees of the senate and the house of representatives with primary jurisdiction over child protective services.
- (b) The report must include the following information for the preceding calendar year:
  - (1) the number of law enforcement officers who completed the training program established under Section 1701.262, Occupations Code;
  - (2) the number of children who have been placed on the child safety check alert list and the number of those children who have been located; and
  - (3) the number of families who have been placed on the child safety check alert list and the number of those families who have been located.
- (c) This section expires February 2, 2021.

### **CHAPTER 262 ❖ PROCEDURES IN SUIT BY GOVERNMENTAL ENTITY TO PROTECT HEALTH AND SAFETY OF CHILD**

#### **SUBCHAPTER A ❖ GENERAL PROVISIONS**

##### **FC §262.007 ❖ POSSESSION AND DELIVERY OF MISSING CHILD**

- (a) A law enforcement officer who, during a criminal investigation relating to a child's custody, discovers that a child is a missing child and believes that a person may flee with or conceal the child shall take possession of the child and provide for the delivery of the child as provided by Subsection (b).
- (b) An officer who takes possession of a child under Subsection (a) shall deliver or arrange for the delivery of the child to a person entitled to possession of the child.
- (c) If a person entitled to possession of the child is not immediately available to take possession of the child, the law enforcement officer shall deliver the child to the Department of Protective and Regulatory Services. Until a person entitled to possession of the child takes possession of the child, the department may, without a court order, retain possession of the child not longer than five days after the date the child is delivered to the department. While the department retains possession of a child under this subsection, the department may place the child in foster home care. If a parent or other person entitled to possession of the child does not take possession of the child before the sixth day after the date the child is delivered to the department, the department shall proceed under this chapter as if the law enforcement officer took possession of the child under Section 262.104.

#### **SUBCHAPTER D ❖ EMERGENCY POSSESSION OF CERTAIN ABANDONED CHILDREN**

##### **FC §262.301 ❖ DEFINITIONS** In this chapter:

- (1) "Designated emergency infant care provider" means:
  - (A) an emergency medical services provider;
  - (B) a hospital; or
  - (C) a child-placing agency licensed by the Department of Protective and Regulatory Services under Chapter 42, Human Resources Code, that:
    - (i) agrees to act as a designated emergency infant care provider under this subchapter; and
    - (ii) has on staff a person who is licensed as a registered nurse under Chapter 301, Occupations Code, or who provides emergency medical services under Chapter 773, Health and Safety Code, and who will examine and provide emergency medical services to a child taken into possession by the agency under this subchapter.
- (2) "Emergency medical services provider" has the meaning assigned that term by Section 773.003, Health and Safety Code.

##### **FC §262.302 ❖ ACCEPTING POSSESSION OF CERTAIN ABANDONED CHILDREN**

- (a) A designated emergency infant care provider shall, without a court order, take possession of a child who appears to be 60 days old or younger if the child is voluntarily delivered to the provider by the child's parent and the parent

did not express an intent to return for the child.

- (b) A designated emergency infant care provider who takes possession of a child under this section has no legal duty to detain or pursue the parent and may not do so unless the child appears to have been abused or neglected. The designated emergency infant care provider has no legal duty to ascertain the parent's identity and the parent may remain anonymous. However, the parent may be given a form for voluntary disclosure of the child's medical facts and history.
- (c) A designated emergency infant care provider who takes possession of a child under this section shall perform any act necessary to protect the physical health or safety of the child. The designated emergency infant care provider is not liable for damages related to the provider's taking possession of, examining, or treating the child, except for damages related to the provider's negligence.

**FC §262.303 ❖ NOTIFICATION OF POSSESSION OF ABANDONED CHILD**

- (a) Not later than the close of the first business day after the date on which a designated emergency infant care provider takes possession of a child under Section 262.302, the provider shall notify the Department of Protective and Regulatory Services that the provider has taken possession of the child.
- (b) The department shall assume the care, control, and custody of the child immediately on receipt of notice under Subsection (a).

**FC §262.304 ❖ FILING PETITION AFTER ACCEPTING POSSESSION OF ABANDONED CHILD**

A child for whom the Department of Protective and Regulatory Services assumes care, control, and custody under Section 262.303 shall be treated as a child taken into possession without a court order, and the department shall take action as required by Section 262.105 with regard to the child.

**FC §262.305 ❖ REPORT TO LAW ENFORCEMENT AGENCY; INVESTIGATION**

- (a) Immediately after assuming care, control, and custody of a child under Section 262.303, the Department of Protective and Regulatory Services shall report the child to appropriate state and local law enforcement agencies as a potential missing child.
- (b) A law enforcement agency that receives a report under Subsection (a) shall investigate whether the child is reported as missing.

**FC §262.306 ❖ NOTICE** Each designated emergency infant care provider shall post in a conspicuous location a notice stating that the provider is a designated emergency infant care provider location and will accept possession of a child in accordance with this subchapter.

**FC §262.307 ❖ REIMBURSEMENT FOR CARE OF ABANDONED CHILD** The department shall reimburse a designated emergency infant care provider that takes possession of a child under Section 262.302 for the cost to the provider of assuming the care, control, and custody of the child.

**FC §262.308 ❖ CONFIDENTIALITY**

- (a) All identifying information, documentation, or other records regarding a person who voluntarily delivers a child to a designated emergency infant care provider under this subchapter is confidential and not subject to release to any individual or entity except as provided by Subsection (b).
- (b) Any pleading or other document filed with a court under this subchapter is confidential, is not public information for purposes of Chapter 552, Government Code, and may not be released to a person other than to a party in a suit regarding the child, the party's attorney, or an attorney ad litem or guardian ad litem appointed in the suit.
- (c) In a suit concerning a child for whom the Department of Family and Protective Services assumes care, control, and custody under this subchapter, the court shall close the hearing to the public unless the court finds that the interests of the child or the public would be better served by opening the hearing to the public.
- (d) Unless the disclosure, receipt, or use is permitted by this section, a person commits an offense if the person knowingly discloses, receives, uses, or permits the use of information derived from records or files described by this section or knowingly discloses identifying information concerning a person who voluntarily delivers a child to a designated emergency infant care provider. An offense under this subsection is a Class B misdemeanor.

**FC §262.309 ❖ SEARCH FOR RELATIVES NOT REQUIRED** The Department of Family and Protective Services is not required to conduct a search for the relatives of a child for whom the department assumes care, control, and custody under this subchapter.

**CHAPTER 411 ❖ DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF TEXAS**

**SUBCHAPTER L ❖ STATEWIDE AMERICA'S MISSING: BROADCAST EMERGENCY RESPONSE (AMBER) ALERT SYSTEM FOR ABDUCTED CHILDREN AND MISSING PERSONS WITH INTELLECTUAL DISABILITIES**

**GC §411.351 ❖ DEFINITIONS** In this subchapter:

- (1) "Abducted child" means a child 17 years of age or younger whose whereabouts are unknown and whose disappearance poses a credible threat to the safety and health of the child, as determined by a local law enforcement agency.
- (2) "Alert system" means the statewide America's Missing: Broadcast Emergency Response (AMBER) alert system for abducted children and missing persons with intellectual disabilities.
- (2-a) "Intellectual disability" means significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period. The term includes a pervasive developmental disorder.
- (3) "Local law enforcement agency" means a local law enforcement agency with jurisdiction over the investigation of:
  - (A) the abduction of a child; or
  - (B) a missing person with an intellectual disability.
- (3-a) "Pervasive developmental disorder" means a disorder that meets the criteria for a pervasive developmental disorder established in the most recent Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.
- (4) "Serious bodily injury" has the meaning assigned by Section 1.07, Penal Code.

**GC §411.352 ❖ STATEWIDE AMERICA'S MISSING: BROADCAST EMERGENCY RESPONSE (AMBER) ALERT SYSTEM FOR ABDUCTED CHILDREN AND MISSING PERSONS WITH INTELLECTUAL DISABILITIES**

With the cooperation of the Texas Department of Transportation, the office of the governor, and other appropriate law enforcement agencies in this state, the department shall develop and implement a statewide alert system to be activated on behalf of an abducted child or a missing person with an intellectual disability.

**GC §411.353 ❖ ADMINISTRATION**

- (a) The director is the statewide coordinator of the alert system.
- (b) The director shall adopt rules and issue directives as necessary to ensure proper implementation of the alert system. The rules and directives must include instructions on the procedures for activating and deactivating the alert system.
- (c) The director shall prescribe forms for use by local law enforcement agencies in requesting activation of the alert system.

**GC §411.354 ❖ DEPARTMENT TO RECRUIT PARTICIPANTS**

- (a) The department shall recruit public and commercial television and radio broadcasters, private commercial entities, state or local governmental entities, the public, and other appropriate persons to assist in developing and implementing the alert system.
- (b) The department may enter into agreements with participants in the alert system to provide necessary support for the alert system.

**GC §411.355 ❖ ACTIVATION**

- (a) On the request of a local law enforcement agency regarding an abducted child, the department shall activate the alert system and notify appropriate participants in the alert system, as established by rule, if:
  - (1) the local law enforcement agency believes that a child has been abducted, including a child who:
    - (A) is younger than 14 years of age; and
    - (B) regardless of whether the child departed willingly with the other person, has been taken from the care and custody of the child's parent or legal guardian without the permission of the parent or legal guardian by another person who is:
      - (i) more than three years older than the child; and
      - (ii) not related to the child by any degree of consanguinity or affinity as defined under Subchapter B, Chapter 573, Government Code;



- (2) the local law enforcement agency believes that the abducted child is in immediate danger of serious bodily injury or death or of becoming the victim of a sexual assault;
  - (3) the local law enforcement agency confirms that a preliminary investigation has taken place that verifies the abduction and eliminates alternative explanations for the child's disappearance; and
  - (4) sufficient information is available to disseminate to the public that could assist in locating the child, a person suspected of abducting the child, or a vehicle suspected of being used in the abduction.
- (b) On the request of a local law enforcement agency regarding a missing person with an intellectual disability, the department shall activate the alert system and notify appropriate participants in the alert system, as established by rule, if:
- (1) the local law enforcement agency receives notice of a missing person with an intellectual disability;
  - (2) the local law enforcement agency verifies that at the time the person is reported missing:
    - (A) the person has an intellectual disability, as determined according to the procedure provided by Section 593.005, Health and Safety Code; and
    - (B) the person's location is unknown;
  - (3) the local law enforcement agency determines that the person's disappearance poses a credible threat to the person's health and safety; and
  - (4) sufficient information is available to disseminate to the public that could assist in locating the person.
- (c) The department may modify the criteria described by Subsection (a) or (b) as necessary for the proper implementation of the alert system.

**GC §411.356 ❖ LOCAL LAW ENFORCEMENT AGENCIES**

Before requesting activation of the alert system, a local law enforcement agency must verify that the criteria described by Section 411.355(a) or (b), as applicable, have been satisfied. On verification of the applicable criteria, the local law enforcement agency shall immediately contact the department to request activation and shall supply the necessary information on the forms prescribed by the director.

**GC §411.357 ❖ STATE AGENCIES**

- (a) A state agency participating in the alert system shall:
- (1) cooperate with the department and assist in developing and implementing the alert system; and
  - (2) establish a plan for providing relevant information to its officers, investigators, or employees, as appropriate, once the alert system has been activated.
- (b) In addition to its duties as a state agency under Subsection (a), the Texas Department of Transportation shall establish a plan for providing relevant information to the public through an existing system of dynamic message signs located across the state.

**GC §411.358 ❖ TERMINATION**

The director shall terminate any activation of the alert system with respect to a particular abducted child or a particular missing person with an intellectual disability if:

- (1) the abducted child or missing person is recovered or the situation is otherwise resolved; or
- (2) the director determines that the alert system is no longer an effective tool for locating and recovering the abducted child or missing person.

**GC §411.359 ❖ SYSTEM NAME**

The director by rule may assign a name other than America's Missing: Broadcast Emergency Response (AMBER) to the alert system when the system is activated regarding a missing person with an intellectual disability.

**SUBCHAPTER M ❖ SILVER ALERT FOR MISSING SENIOR CITIZENS**

**GC §411.381 ❖ DEFINITIONS** In this subchapter:

- (1) "Alert" means the statewide silver alert for missing senior citizens developed and implemented under this subchapter.
- (2) "Local law enforcement agency" means a local law enforcement agency with jurisdiction over the investigation of a missing senior citizen.
- (3) "Senior citizen" means a person who is 65 years of age or older.

### **GC § 411.382 ❖ SILVER ALERT FOR MISSING SENIOR CITIZENS**

With the cooperation of the Texas Department of Transportation, the office of the governor, and other appropriate law enforcement agencies in this state, the department shall develop and implement a statewide silver alert to be activated on behalf of a missing senior citizen.

### **GC § 411.383 ❖ ADMINISTRATION**

- (a) The director is the statewide coordinator of the alert.
- (b) The director shall adopt rules and issue directives as necessary to ensure proper implementation of the alert. The rules and directives must include:
  - (1) the procedures to be used by a local law enforcement agency to verify whether a senior citizen:
    - (A) is missing; and
    - (B) has an impaired mental condition;
  - (2) a description of the circumstances under which a local law enforcement agency is required to report a missing senior citizen to the department; and
  - (3) the procedures to be used by an individual or entity to report information about a missing senior citizen to designated media outlets in Texas.

### **GC § 411.384 ❖ DEPARTMENT TO RECRUIT PARTICIPANTS**

The department shall recruit public and commercial television and radio broadcasters, private commercial entities, state or local governmental entities, the public, and other appropriate persons to assist in developing and implementing the alert.

### **GC § 411.385 ❖ DUTIES OF TEXAS DEPARTMENT OF TRANSPORTATION**

The Texas Department of Transportation shall:

- (1) cooperate with the department and assist in developing and implementing the alert; and
- (2) establish a plan for providing relevant information to the public through an existing system of dynamic message signs located across the state.

### **GC § 411.386 ❖ NOTIFICATION TO DEPARTMENT OF MISSING SENIOR CITIZEN**

- (a) A local law enforcement agency may notify the department if the agency:
  - (1) receives notice of a missing senior citizen;
  - (2) verifies that at the time the senior citizen is reported missing:
    - (A) the person reported missing is 65 years of age or older;
    - (B) the senior citizen's location is unknown;
    - (C) the senior citizen's domicile is in Texas; and
    - (D) the senior citizen has an impaired mental condition; and
  - (3) determines that the senior citizen's disappearance poses a credible threat to the senior citizen's health and safety.
- (b) The local law enforcement agency shall:
  - (1) require the family or legal guardian of the missing senior citizen to provide documentation of the senior citizen's impaired mental condition to verify the condition as required by Subsection (a)(2)(D); and
  - (2) as soon as practicable, determine whether the senior citizen's disappearance poses a credible threat to the senior citizen's health and safety for purposes of Subsection (a)(3).

### **GC § 411.387 ❖ ACTIVATION OF SILVER ALERT**

- (a) When a local law enforcement agency notifies the department under Section 411.386, the department shall confirm the accuracy of the information and, if confirmed, immediately issue an alert under this subchapter in accordance with department rules.
- (b) In issuing the alert, the department shall send the alert to designated media outlets in Texas. Following receipt of the alert, participating radio stations, television stations, and other media outlets may issue the alert at designated intervals to assist in locating the missing senior citizen.

### **GC § 411.388 ❖ CONTENT OF SILVER ALERT** The alert must include:

- (1) all appropriate information that is provided by the local law enforcement agency and that may lead to the safe recovery of the missing senior citizen; and
- (2) a statement instructing any person with information related to the missing senior citizen to contact a local law enforcement agency.

**GC § 411.389 ❖ TERMINATION OF SILVER ALERT**

- (a) The director shall terminate any activation of the alert with respect to a particular missing senior citizen not later than the earlier of the date on which:
  - (1) the missing senior citizen is located or the situation is otherwise resolved; or
  - (2) the notification period ends, as determined by department rule.
- (b) A local law enforcement agency that locates a missing senior citizen who is the subject of an alert under this subchapter shall notify the department as soon as possible that the missing senior citizen has been located.

**CHAPTER 466 ❖ STATE LOTTERY**

**GC §466.026 ❖ AMBER ALERT**

On receipt of notice by the Department of Public Safety that the Statewide Texas Amber Alert Network has been activated, the commission shall disseminate Amber Alert information at its retail locations through the lottery operator system.

*See Text of Federal Statutes Relating to Missing Persons, AMBER Alert*

**TEXAS HEALTH AND SAFETY CODE**

**CHAPTER 241 ❖ HOSPITALS**

**SUBCHAPTER H ❖ PATIENT SAFETY PROGRAM**

**HSC §241.201 ❖ DUTIES OF DEPARTMENT**

- (a) The department shall develop a patient safety program for hospitals . . .

**HSC §241.202 ❖ ANNUAL REPORT**

- (a) On renewal of a license under this chapter, a hospital shall submit to the department an annual report that lists the number of occurrences at the hospital or at an outpatient facility owned or operated by the hospital of each of the following events during the preceding year: . . .
  - (4) the abduction of a newborn infant patient from the hospital or the discharge of a newborn infant patient from the hospital into the custody of an individual in circumstances in which the hospital knew, or in the exercise of ordinary care should have known, that the individual did not have legal custody of the infant;
  - (5) the sexual assault of a patient during treatment or while the patient was on the premises of the hospital or facility; . . .

**CHAPTER 551 ❖ GENERAL PROVISIONS**

**HSC §551.001 ❖ DEFINITIONS** In this subtitle:

- (1) "Board" means the Texas Board of Mental Health and Mental Retardation.
- (2) "Commissioner" means the commissioner of mental health and mental retardation.
- (3) "Department" means the Texas Department of Mental Health and Mental Retardation.
- (4) "Department facility" means a facility under the department's jurisdiction for persons with mental illness or mental retardation.

**HSC §551.025 ❖ DUTY TO REPORT MISSING PATIENT OR CLIENT**

If a person receiving inpatient mental retardation services or court-ordered inpatient mental health services in a department facility leaves the facility without notifying the facility or without the facility's consent, the facility superintendent shall immediately report the person as a missing person to an appropriate law enforcement agency in the area in which the facility is located.

## CHAPTER 773 ❖ EMERGENCY MEDICAL SERVICES

### HSC §773.003 ❖ DEFINITIONS . . .

- (11) "Emergency medical services provider" means a person who uses or maintains emergency medical services vehicles, medical equipment, and emergency medical services personnel to provide emergency medical services . . .

## TEXAS PENAL CODE

### CHAPTER 3 ❖ MULTIPLE PROSECUTIONS

#### PC §3.03 ❖ SENTENCES FOR OFFENSES ARISING OUT OF SAME CRIMINAL EPISODE

- (a) When the accused is found guilty of more than one offense arising out of the same criminal episode prosecuted in a single criminal action, a sentence for each offense for which he has been found guilty shall be pronounced. Except as provided by Subsection (b), the sentences shall run concurrently.
- (b) If the accused is found guilty of more than one offense arising out of the same criminal episode, the sentences may run concurrently or consecutively if each sentence is for a conviction of:
- (1) an offense:
    - (A) under Section 49.07 or 49.08, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of both sections; or
    - (B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A), regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of both sections;
  - (2) an offense:
    - (A) under Section 33.021 or an offense under Section 21.02, 21.11, 22.011, 22.021, 25.02, or 43.25 committed against a victim younger than 17 years of age at the time of the commission of the offense regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of more than one section; or
    - (B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A) committed against a victim younger than 17 years of age at the time of the commission of the offense regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of more than one section;
  - (3) an offense:
    - (A) under Section 21.15 or 43.26, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of both sections; or
    - (B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A), regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of both sections;
  - (4) an offense for which the judgment in the case contains an affirmative finding under Article 42.0197, Code of Criminal Procedure; or
  - (5) an offense:
    - (A) under Section 20A.02 or 43.05, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of both sections; or
    - (B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A), regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of both sections.
- (b-1) Subsection (b)(4) does not apply to a defendant whose case was transferred to the court under Section 54.02, Family Code.

## CHAPTER 15 ❖ PREPARATORY OFFENSES

### PC §15.031 ❖ CRIMINAL SOLICITATION OF A MINOR

- (a) A person commits an offense if, with intent that an offense listed by Section 3g(a)(1), Article 42.12, Code of Criminal Procedure, be committed, the person requests, commands, or attempts to induce a minor to engage in specific conduct that, under the circumstances surrounding the actor's conduct as the actor believes them to be, would constitute an offense listed by Section 3g(a)(1), Article 42.12, or make the minor a party to the commission of an offense listed by Section 3g(a)(1), Article 42.12.
- (b) A person commits an offense if, with intent that an offense under Section 20A.02(a)(7) or (8), 21.02, 21.11, 22.011, 22.021, 43.02, 43.05(a)(2), or 43.25 be committed, the person by any means requests, commands, or attempts to induce a minor or another whom the person believes to be a minor to engage in specific conduct that, under the circumstances surrounding the actor's conduct as the actor believes them to be, would constitute an offense under one of those sections or would make the minor or other believed by the person to be a minor a party to the commission of an offense under one of those sections.
- (c) A person may not be convicted under this section on the uncorroborated testimony of the minor allegedly solicited unless the solicitation is made under circumstances strongly corroborative of both the solicitation itself and the actor's intent that the minor act on the solicitation.
- (d) It is no defense to prosecution under this section that:
  - (1) the minor solicited is not criminally responsible for the offense solicited;
  - (2) the minor solicited has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense or of a different type or class of offense, or is immune from prosecution;
  - (3) the actor belongs to a class of persons that by definition of the offense solicited is legally incapable of committing the offense in an individual capacity; or
  - (4) the offense solicited was actually committed.
- (e) An offense under this section is one category lower than the solicited offense, except that an offense under this section is the same category as the solicited offense if it is shown on the trial of the offense that the actor:
  - (1) was at the time of the offense 17 years of age or older and a member of a criminal street gang, as defined by Section 71.01; and
  - (2) committed the offense with the intent to:
    - (A) further the criminal activities of the criminal street gang; or
    - (B) avoid detection as a member of a criminal street gang.
- (f) In this section, "minor" means an individual younger than 17 years of age.

## CHAPTER 20 ❖ KIDNAPPING, UNLAWFUL RESTRAINT, AND SMUGGLING OF PERSONS

### PC §20.01 ❖ DEFINITIONS In this chapter:

- (1) "Restrain" means to restrict a person's movements without consent, so as to interfere substantially with the person's liberty, by moving the person from one place to another or by confining the person. Restraint is "without consent" if it is accomplished by:
  - (A) force, intimidation, or deception; or
  - (B) any means, including acquiescence of the victim, if:
    - (i) the victim is a child who is less than 14 years of age or an incompetent person and the parent, guardian, or person or institution acting in loco parentis has not acquiesced in the movement or confinement; or
    - (ii) the victim is a child who is 14 years of age or older and younger than 17 years of age, the victim is taken outside of the state and outside a 120-mile radius from the victim's residence, and the parent, guardian, or person or institution acting in loco parentis has not acquiesced in the movement.
- (2) "Abduct" means to restrain a person with intent to prevent his liberation by:
  - (A) secreting or holding him in a place where he is not likely to be found; or
  - (B) using or threatening to use deadly force.

- (3) "Relative" means a parent or stepparent, ancestor, sibling, or uncle or aunt, including an adoptive relative of the same degree through marriage or adoption.
- (4) "Person" means an individual, corporation, or association.
- (5) Notwithstanding Section 1.07, "individual" means a human being who has been born and is alive.

**PC §20.02 ❖ UNLAWFUL RESTRAINT**

- (a) A person commits an offense if he intentionally or knowingly restrains another person.
- (b) It is an affirmative defense to prosecution under this section that:
  - (1) the person restrained was a child younger than 14 years of age;
  - (2) the actor was a relative of the child; and
  - (3) the actor's sole intent was to assume lawful control of the child.
- (c) An offense under this section is a Class A misdemeanor, except that the offense is:
  - (1) a state jail felony if the person restrained was a child younger than 17 years of age; or
  - (2) a felony of the third degree if:
    - (A) the actor recklessly exposes the victim to a substantial risk of serious bodily injury;
    - (B) the actor restrains an individual the actor knows is a public servant while the public servant is lawfully discharging an official duty or in retaliation or on account of an exercise of official power or performance of an official duty as a public servant; or
    - (C) the actor while in custody restrains any other person.
- (d) It is no offense to detain or move another under this section when it is for the purpose of effecting a lawful arrest or detaining an individual lawfully arrested.
- (e) It is an affirmative defense to prosecution under this section that:
  - (1) the person restrained was a child who is 14 years of age or older and younger than 17 years of age;
  - (2) the actor does not restrain the child by force, intimidation, or deception; and
  - (3) the actor is not more than three years older than the child.

**PC §20.03 ❖ KIDNAPPING**

- (a) A person commits an offense if he intentionally or knowingly abducts another person.
- (b) It is an affirmative defense to prosecution under this section that:
  - (1) the abduction was not coupled with intent to use or to threaten to use deadly force;
  - (2) the actor was a relative of the person abducted; and
  - (3) the actor's sole intent was to assume lawful control of the victim.
- (c) An offense under this section is a felony of the third degree.

**PC §20.04 ❖ AGGRAVATED KIDNAPPING**

- (a) A person commits an offense if he intentionally or knowingly abducts another person with the intent to:
  - (1) hold him for ransom or reward;
  - (2) use him as a shield or hostage;
  - (3) facilitate the commission of a felony or the flight after the attempt or commission of a felony;
  - (4) inflict bodily injury on him or violate or abuse him sexually;
  - (5) terrorize him or a third person; or
  - (6) interfere with the performance of any governmental or political function.
- (b) A person commits an offense if the person intentionally or knowingly abducts another person and uses or exhibits a deadly weapon during the commission of the offense.
- (c) Except as provided by Subsection (d), an offense under this section is a felony of the first degree.
- (d) At the punishment stage of a trial, the defendant may raise the issue as to whether he voluntarily released the victim in a safe place. If the defendant proves the issue in the affirmative by a preponderance of the evidence, the offense is a felony of the second degree.

**PC §20.05 ❖ SMUGGLING OF PERSONS**

- (a) A person commits an offense if the person intentionally uses a motor vehicle, aircraft, or watercraft to transport an individual with the intent to:
  - (1) conceal the individual from a peace officer or special investigator; or
  - (2) flee from a person the actor knows is a peace officer or special investigator attempting to lawfully arrest or detain the actor.

- (b) Except as provided by Subsection (c), an offense under this section is a state jail felony.
- (c) An offense under this section is a felony of the third degree if the actor commits the offense:
  - (1) for pecuniary benefit; or
  - (2) in a manner that creates a substantial likelihood that the transported individual will suffer serious bodily injury or death.
- (d) It is an affirmative defense to prosecution under this section that the actor is related to the transported individual within the second degree of consanguinity or, at the time of the offense, within the second degree of affinity.
- (e) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.

## **CHAPTER 20A ❖ TRAFFICKING OF PERSONS**

### **PC §20A.01 ❖ DEFINITIONS** In this chapter:

- (1) "Child" means a person younger than 18 years of age.
- (2) "Forced labor or services" means labor or services, other than labor or services that constitute sexual conduct, that are performed or provided by another person and obtained through an actor's use of force, fraud, or coercion.
- (3) "Sexual conduct" has the meaning assigned by Section 43.25.
- (4) "Traffic" means to transport, entice, recruit, harbor, provide, or otherwise obtain another person by any means.

### **PC §20A.02 ❖ TRAFFICKING OF PERSONS**

- (a) A person commits an offense if the person knowingly:
  - (1) traffics another person with the intent that the trafficked person engage in forced labor or services;
  - (2) receives a benefit from participating in a venture that involves an activity described by Subdivision (1), including by receiving labor or services the person knows are forced labor or services;
  - (3) traffics another person and, through force, fraud, or coercion, causes the trafficked person to engage in conduct prohibited by:
    - (A) Section 43.02 (Prostitution);
    - (B) Section 43.03 (Promotion of Prostitution);
    - (C) Section 43.04 (Aggravated Promotion of Prostitution); or
    - (D) Section 43.05 (Compelling Prostitution);
  - (4) receives a benefit from participating in a venture that involves an activity described by Subdivision (3) or engages in sexual conduct with a person trafficked in the manner described in Subdivision (3);
  - (5) traffics a child with the intent that the trafficked child engage in forced labor or services;
  - (6) receives a benefit from participating in a venture that involves an activity described by Subdivision (5), including by receiving labor or services the person knows are forced labor or services;
  - (7) traffics a child and by any means causes the trafficked child to engage in, or become the victim of, conduct prohibited by:
    - (A) Section 21.02 (Continuous Sexual Abuse of Young Child or Children);
    - (B) Section 21.11 (Indecency with a Child);
    - (C) Section 22.011 (Sexual Assault);
    - (D) Section 22.021 (Aggravated Sexual Assault);
    - (E) Section 43.02 (Prostitution);
    - (F) Section 43.03 (Promotion of Prostitution);
    - (G) Section 43.04 (Aggravated Promotion of Prostitution);
    - (H) Section 43.05 (Compelling Prostitution);
    - (I) Section 43.25 (Sexual Performance by a Child);
    - (J) Section 43.251 (Employment Harmful to Children); or
    - (K) Section 43.26 (Possession or Promotion of Child Pornography); or
  - (8) receives a benefit from participating in a venture that involves an activity described by Subdivision (7) or engages in sexual conduct with a child trafficked in the manner described in Subdivision (7).
- (a-1) For purposes of Subsection (a)(3), "coercion" as defined by Section 1.07 includes destroying, concealing, confiscating, or withholding from the trafficked person, or threatening to destroy, conceal, confiscate, or withhold from the trafficked person, the trafficked person's actual or purported:
  - (1) government records; or
  - (2) identifying information or documents.

- (b) Except as otherwise provided by this subsection, an offense under this section is a felony of the second degree. An offense under this section is a felony of the first degree if:
  - (1) the applicable conduct constitutes an offense under Subsection (a)(5), (6), (7), or (8), regardless of whether the actor knows the age of the child at the time of the offense; or
  - (2) the commission of the offense results in the death of the person who is trafficked.
- (c) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.
- (d) If the victim of an offense under Subsection (a)(7)(A) is the same victim as a victim of an offense under Section 21.02, a defendant may not be convicted of the offense under Section 21.02 in the same criminal action as the offense under Subsection (a)(7)(A) unless the offense under Section 21.02:
  - (1) is charged in the alternative;
  - (2) occurred outside the period in which the offense alleged under Subsection (a)(7)(A) was committed; or
  - (3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (a)(7)(A).

**PC §20A.03 ❖ CONTINUOUS TRAFFICKING OF PERSONS**

- (a) A person commits an offense if, during a period that is 30 or more days in duration, the person engages two or more times in conduct that constitutes an offense under Section 20A.02.
- (b) If a jury is the trier of fact, members of the jury are not required to agree unanimously on which specific conduct engaged in by the defendant constituted an offense under Section 20A.02 or on which exact date the defendant engaged in that conduct. The jury must agree unanimously that the defendant, during a period that is 30 or more days in duration, engaged in conduct that constituted an offense under Section 20A.02.
- (c) If the victim of an offense under Subsection (a) is the same victim as a victim of an offense under Section 20A.02, a defendant may not be convicted of the offense under Section 20A.02 in the same criminal action as the offense under Subsection (a), unless the offense under Section 20A.02:
  - (1) is charged in the alternative;
  - (2) occurred outside the period in which the offense alleged under Subsection (a) was committed; or
  - (3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (a).
- (d) A defendant may not be charged with more than one count under Subsection (a) if all of the conduct that constitutes an offense under Section 20A.02 is alleged to have been committed against the same victim.
- (e) An offense under this section is a felony of the first degree, punishable by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 25 years.

**CHAPTER 21 ❖ SEXUAL OFFENSES**

**PC §21.02 ❖ CONTINUOUS SEXUAL ABUSE OF YOUNG CHILD OR CHILDREN**

- (a) In this section, "child" has the meaning assigned by Section 22.011(c).
- (b) A person commits an offense if:
  - (1) during a period that is 30 or more days in duration, the person commits two or more acts of sexual abuse, regardless of whether the acts of sexual abuse are committed against one or more victims; and
  - (2) at the time of the commission of each of the acts of sexual abuse, the actor is 17 years of age or older and the victim is a child younger than 14 years of age, regardless of whether the actor knows the age of the victim at the time of the offense.
- (c) For purposes of this section, "act of sexual abuse" means any act that is a violation of one or more of the following penal laws:
  - (1) aggravated kidnapping under Section 20.04(a)(4), if the actor committed the offense with the intent to violate or abuse the victim sexually;
  - (2) indecency with a child under Section 21.11(a)(1), if the actor committed the offense in a manner other than by touching, including touching through clothing, the breast of a child;
  - (3) sexual assault under Section 22.011;
  - (4) aggravated sexual assault under Section 22.021;
  - (5) burglary under Section 30.02, if the offense is punishable under Subsection (d) of that section and the actor committed the offense with the intent to commit an offense listed in Subdivisions (1)-(4);
  - (6) sexual performance by a child under Section 43.25;
  - (7) trafficking of persons under Section 20A.02(a)(7) or (8); and
  - (8) compelling prostitution under Section 43.05(a)(2).
- (d) If a jury is the trier of fact, members of the jury are not required to agree unanimously on which specific acts of



sexual abuse were committed by the defendant or the exact date when those acts were committed. The jury must agree unanimously that the defendant, during a period that is 30 or more days in duration, committed two or more acts of sexual abuse.

- (e) A defendant may not be convicted in the same criminal action of an offense listed under Subsection (c) the victim of which is the same victim as a victim of the offense alleged under Subsection (b) unless the offense listed in Subsection (c):
  - (1) is charged in the alternative;
  - (2) occurred outside the period in which the offense alleged under Subsection (b) was committed; or
  - (3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (b).
- (f) A defendant may not be charged with more than one count under Subsection (b) if all of the specific acts of sexual abuse that are alleged to have been committed are alleged to have been committed against a single victim.
- (g) It is an affirmative defense to prosecution under this section that the actor:
  - (1) was not more than five years older than:
    - (A) the victim of the offense, if the offense is alleged to have been committed against only one victim; or
    - (B) the youngest victim of the offense, if the offense is alleged to have been committed against more than one victim;
  - (2) did not use duress, force, or a threat against a victim at the time of the commission of any of the acts of sexual abuse alleged as an element of the offense; and
  - (3) at the time of the commission of any of the acts of sexual abuse alleged as an element of the offense:
    - (A) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or
    - (B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section or an act of sexual abuse as described by Subsection (c).
- (h) An offense under this section is a felony of the first degree, punishable by imprisonment in the Texas Department of Criminal Justice for life, or for any term of not more than 99 years or less than 25 years.

## **CHAPTER 22 ❖ ASSAULTIVE OFFENSES**

### **PC §22.021 ❖ AGGRAVATED SEXUAL ASSAULT**

- (a) A person commits an offense:
  - (1) if the person:
    - (A) intentionally or knowingly:
      - (i) causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;
      - (ii) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or
      - (iii) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or
    - (B) regardless of whether the person knows the age of the child at the time of the offense, intentionally or knowingly:
      - (i) causes the penetration of the anus or sexual organ of a child by any means;
      - (ii) causes the penetration of the mouth of a child by the sexual organ of the actor;
      - (iii) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;
      - (iv) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or
      - (v) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor; and
  - (2) if:
    - (A) the person:
      - (i) causes serious bodily injury or attempts to cause the death of the victim or another person in the course of the same criminal episode;
      - (ii) by acts or words places the victim in fear that any person will become the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) or that death, serious bodily injury, or kidnapping will be imminently inflicted on any person;
      - (iii) by acts or words occurring in the presence of the victim threatens to cause any person to become the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) or to cause the death, serious bodily injury, or kidnapping of any person;

- (iv) uses or exhibits a deadly weapon in the course of the same criminal episode;
  - (v) acts in concert with another who engages in conduct described by Subdivision (1) directed toward the same victim and occurring during the course of the same criminal episode; or
  - (vi) with the intent of facilitating the commission of the offense, administers or provides to the victim of the offense any substance capable of impairing the victim's ability to appraise the nature of the act or to resist the act;
  - (B) the victim is younger than 14 years of age, regardless of whether the person knows the age of the victim at the time of the offense; or
  - (C) the victim is an elderly individual or a disabled individual.
- (b) In this section:
- (1) "Child" has the meaning assigned by Section 22.011(c).
  - (2) "Elderly individual" and "disabled individual" have the meanings assigned by Section 22.04(c).
- (c) An aggravated sexual assault under this section is without the consent of the other person if the aggravated sexual assault occurs under the same circumstances listed in Section 22.011(b).
- (d) The defense provided by Section 22.011(d) applies to this section.
- (e) An offense under this section is a felony of the first degree.
- (f) The minimum term of imprisonment for an offense under this section is increased to 25 years if:
- (1) the victim of the offense is younger than six years of age at the time the offense is committed; or
  - (2) the victim of the offense is younger than 14 years of age at the time the offense is committed and the actor commits the offense in a manner described by Subsection (a)(2)(A).

## **CHAPTER 25 ❖ OFFENSES AGAINST THE FAMILY**

### **PC §25.03 ❖ INTERFERENCE WITH CHILD CUSTODY**

- (a) A person commits an offense if the person takes or retains a child younger than 18 years of age:
- (1) when the person knows that the person's taking or retention violates the express terms of a judgment or order, including a temporary order, of a court disposing of the child's custody;
  - (2) when the person has not been awarded custody of the child by a court of competent jurisdiction, knows that a suit for divorce or a civil suit or application for habeas corpus to dispose of the child's custody has been filed, and takes the child out of the geographic area of the counties composing the judicial district if the court is a district court or the county if the court is a statutory county court, without the permission of the court and with the intent to deprive the court of authority over the child; or
  - (3) outside of the United States with the intent to deprive a person entitled to possession of or access to the child of that possession or access and without the permission of that person.
- (b) A noncustodial parent commits an offense if, with the intent to interfere with the lawful custody of a child younger than 18 years, the noncustodial parent knowingly entices or persuades the child to leave the custody of the custodial parent, guardian, or person standing in the stead of the custodial parent or guardian of the child.
- (c) It is a defense to prosecution under Subsection (a)(2) that the actor returned the child to the geographic area of the counties composing the judicial district if the court is a district court or the county if the court is a statutory county court, within three days after the date of the commission of the offense.
- (c-1) It is an affirmative defense to prosecution under Subsection (a)(3) that:
- (1) the taking or retention of the child was pursuant to a valid order providing for possession of or access to the child; or
  - (2) notwithstanding any violation of a valid order providing for possession of or access to the child, the actor's retention of the child was due only to circumstances beyond the actor's control and the actor promptly provided notice or made reasonable attempts to provide notice of those circumstances to the other person entitled to possession of or access to the child.
- (c-2) Subsection (a)(3) does not apply if, at the time of the offense, the person taking or retaining the child:
- (1) was entitled to possession of or access to the child; and
  - (2) was fleeing the commission or attempted commission of family violence, as defined by Section 71.004, Family Code, against the child or the person.
- (d) An offense under this section is a state jail felony.

### **PC §25.031 ❖ AGREEMENT TO ABDUCT FROM CUSTODY**

- (a) A person commits an offense if the person agrees, for remuneration or the promise of remuneration, to abduct a child younger than 18 years of age by force, threat of force, misrepresentation, stealth, or unlawful entry, knowing that the child is under the care and control of a person having custody or physical possession of the child under a

court order or under the care and control of another person who is exercising care and control with the consent of a person having custody or physical possession under a court order.

- (b) An offense under this section is a state jail felony.

**PC §25.04 ❖ ENTICING A CHILD**

- (a) A person commits an offense if, with the intent to interfere with the lawful custody of a child younger than 18 years, he knowingly entices, persuades, or takes the child from the custody of the parent or guardian or person standing in the stead of the parent or guardian of such child.
- (b) An offense under this section is a Class B misdemeanor, unless it is shown on the trial of the offense that the actor intended to commit a felony against the child, in which event an offense under this section is a felony of the third degree.

**PC §25.06 ❖ HARBORING RUNAWAY CHILD**

- (a) A person commits an offense if he knowingly harbors a child and he is criminally negligent about whether the child:
- (1) is younger than 18 years; and
  - (2) has escaped from the custody of a peace officer, a probation officer, the Texas Youth Council, or a detention facility for children, or is voluntarily absent from the child's home without the consent of the child's parent or guardian for a substantial length of time or without the intent to return.
- (b) It is a defense to prosecution under this section that the actor was related to the child within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code.
- (c) It is a defense to prosecution under this section that the actor notified:
- (1) the person or agency from which the child escaped or a law enforcement agency of the presence of the child within 24 hours after discovering that the child had escaped from custody; or
  - (2) a law enforcement agency or a person at the child's home of the presence of the child within 24 hours after discovering that the child was voluntarily absent from home without the consent of the child's parent or guardian.
- (d) An offense under this section is a Class A misdemeanor.
- (e) On the receipt of a report from a peace officer, probation officer, the Texas Youth Council, a foster home, or a detention facility for children that a child has escaped its custody or upon receipt of a report from a parent, guardian, conservator, or legal custodian that a child is missing, a law enforcement agency shall immediately enter a record of the child into the National Crime Information Center.

**PC §25.08 ❖ SALE OR PURCHASE OF CHILD**

- (a) A person commits an offense if he:
- (1) possesses a child younger than 18 years of age or has the custody, conservatorship, or guardianship of a child younger than 18 years of age, whether or not he has actual possession of the child, and he offers to accept, agrees to accept, or accepts a thing of value for the delivery of the child to another or for the possession of the child by another for purposes of adoption; or
  - (2) offers to give, agrees to give, or gives a thing of value to another for acquiring or maintaining the possession of a child for the purpose of adoption.
- (b) It is an exception to the application of this section that the thing of value is:
- (1) a fee or reimbursement paid to a child-placing agency as authorized by law;
  - (2) a fee paid to an attorney, social worker, mental health professional, or physician for services rendered in the usual course of legal or medical practice or in providing adoption counseling;
  - (3) a reimbursement of legal or medical expenses incurred by a person for the benefit of the child; or
  - (4) a necessary pregnancy-related expense paid by a child-placing agency for the benefit of the child's parent during the pregnancy or after the birth of the child as permitted by the minimum standards for child-placing agencies and Department of Protective and Regulatory Services rules.
- (c) An offense under this section is a felony of the third degree, except that the offense is a felony of the second degree if the actor commits the offense with intent to commit an offense under Section 43.25.

**PC §25.10 ❖ INTERFERENCE WITH RIGHTS OF GUARDIAN OF THE PERSON**

- (a) In this section:
- (1) "Possessory right" means the right of a guardian of the person to have physical possession of a ward and to establish the ward's legal domicile, as provided by Section 767(1), Texas Probate Code.
  - (2) "Ward" has the meaning assigned by Section 601, Texas Probate Code.
- (b) A person commits an offense if the person takes, retains, or conceals a ward when the person knows that the person's taking, retention, or concealment interferes with a possessory right with respect to the ward.

- (c) An offense under this section is a state jail felony.
- (d) This section does not apply to a governmental entity where the taking, retention, or concealment of the ward was authorized by Subtitle E, Title 5, Family Code, or Chapter 48, Human Resources Code.

## **CHAPTER 37 ❖ PERJURY AND OTHER FALSIFICATION**

### **PC §37.08 ❖ FALSE REPORT TO PEACE OFFICER, FEDERAL SPECIAL INVESTIGATOR, OR LAW ENFORCEMENT EMPLOYEE**

- (a) A person commits an offense if, with intent to deceive, he knowingly makes a false statement that is material to a criminal investigation and makes the statement to:
  - (1) a peace officer or federal special investigator conducting the investigation; or
  - (2) any employee of a law enforcement agency that is authorized by the agency to conduct the investigation and that the actor knows is conducting the investigation.
- (b) In this section, "law enforcement agency" has the meaning assigned by Article 59.01, Code of Criminal Procedure.
- (c) An offense under this section is a Class B misdemeanor.

### **PC §37.081 ❖ FALSE REPORT REGARDING MISSING CHILD OR MISSING PERSON**

- (a) A person commits an offense if, with intent to deceive, the person knowingly:
  - (1) files a false report of a missing child or missing person with a law enforcement officer or agency; or
  - (2) makes a false statement to a law enforcement officer or other employee of a law enforcement agency relating to a missing child or missing person.
- (b) An offense under this section is a Class C misdemeanor.

### **PC §37.14 ❖ FALSE STATEMENT REGARDING CHILD CUSTODY DETERMINATION MADE IN FOREIGN COUNTRY**

- (a) For purposes of this section, "child custody determination" has the meaning assigned by Section 152.102, Family Code.
- (b) A person commits an offense if the person knowingly makes or causes to be made a false statement relating to a child custody determination made in a foreign country during a hearing held under Chapter 152 or Subchapter I, Chapter 153, Family Code.
- (c) An offense under this section is a felony of the third degree.

## **CHAPTER 43 ❖ PUBLIC INDECENCY**

### **SUBCHAPTER A ❖ PROSTITUTION**

#### **PC §43.05 ❖ COMPELLING PROSTITUTION**

- (a) A person commits an offense if the person knowingly:
  - (1) causes another by force, threat, or fraud to commit prostitution; or
  - (2) causes by any means a child younger than 18 years to commit prostitution, regardless of whether the actor knows the age of the child at the time of the offense.
- (b) An offense under Subsection (a)(1) is a felony of the second degree. An offense under Subsection (a)(2) is a felony of the first degree.

### **SUBCHAPTER B ❖ OBSCENITY**

#### **Sec. 43.261 ❖ ELECTRONIC TRANSMISSION OF CERTAIN VISUAL MATERIAL DEPICTING MINOR**

- (a) In this section:
  - (1) "Dating relationship" has the meaning assigned by Section 71.0021, Family Code.
  - (2) "Minor" means a person younger than 18 years of age.
  - (3) "Produce" with respect to visual material includes any conduct that directly contributes to the creation or manufacture of the material.
  - (4) "Promote" has the meaning assigned by Section 43.25.
  - (5) "Sexual conduct" has the meaning assigned by Section 43.25.
  - (6) "Visual material" has the meaning assigned by Section 43.26.

- (b) A person who is a minor commits an offense if the person intentionally or knowingly:
  - (1) by electronic means promotes to another minor visual material depicting a minor, including the actor, engaging in sexual conduct, if the actor produced the visual material or knows that another minor produced the visual material; or
  - (2) possesses in an electronic format visual material depicting another minor engaging in sexual conduct, if the actor produced the visual material or knows that another minor produced the visual material.
- (c) An offense under Subsection (b)(1) is a Class C misdemeanor, except that the offense is:
  - (1) a Class B misdemeanor if it is shown on the trial of the offense that the actor:
    - (A) promoted the visual material with intent to harass, annoy, alarm, abuse, torment, embarrass, or offend another; or
    - (B) except as provided by Subdivision (2)(A), has previously been convicted one time of any offense under this section; or
  - (2) a Class A misdemeanor if it is shown on the trial of the offense that the actor has previously been:
    - (A) convicted one or more times of an offense punishable under Subdivision (1)(A); or
    - (B) convicted two or more times of any offense under this section.
- (d) An offense under Subsection (b)(2) is a Class C misdemeanor, except that the offense is:
  - (1) a Class B misdemeanor if it is shown on the trial of the offense that the actor has previously been convicted one time of any offense under this section; or
  - (2) a Class A misdemeanor if it is shown on the trial of the offense that the actor has previously been convicted two or more times of any offense under this section.
- (e) It is an affirmative defense to prosecution under this section that the visual material:
  - (1) depicted only the actor or another minor:
    - (A) who is not more than two years older or younger than the actor and with whom the actor had a dating relationship at the time of the offense; or
    - (B) who was the spouse of the actor at the time of the offense; and
  - (2) was promoted or received only to or from the actor and the other minor.
- (f) It is a defense to prosecution under Subsection (b)(2) that the actor:
  - (1) did not produce or solicit the visual material;
  - (2) possessed the visual material only after receiving the material from another minor; and
  - (3) destroyed the visual material within a reasonable amount of time after receiving the material from another minor.
- (g) If conduct that constitutes an offense under this section also constitutes an offense under another law, the defendant may be prosecuted under this section, the other law, or both.
- (h) Notwithstanding Section 51.13, Family Code, a finding that a person has engaged in conduct in violation of this section is considered a conviction for the purposes of Subsections (c) and (d).

**Sec. 43.262 ❖ POSSESSION OR PROMOTION OF LEWD VISUAL MATERIAL DEPICTING CHILD**

- (a) In this section:
  - (1) "Promote" and "sexual conduct" have the meanings assigned by Section 43.25.
  - (2) "Visual material" has the meaning assigned by Section 43.26.
- (b) A person commits an offense if the person knowingly possesses, accesses with intent to view, or promotes visual material that:
  - (1) depicts the lewd exhibition of the genitals or pubic area of an unclothed, partially clothed, or clothed child who is younger than 18 years of age at the time the visual material was created;
  - (2) appeals to the prurient interest in sex; and
  - (3) has no serious literary, artistic, political, or scientific value.
- (c) An offense under this section is a state jail felony, except that the offense is:
  - (1) a felony of the third degree if it is shown on the trial of the offense that the person has been previously convicted one time of an offense under this section or Section 43.26; and
  - (2) a felony of the second degree if it is shown on the trial of the offense that the person has been previously convicted two or more times of an offense under this section or Section 43.26.
- (d) It is not a defense to prosecution under this section that the depicted child consented to the creation of the visual material.



## UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT (UCCJEA)

### [SYNOPSIS]

**Source of material: National Conference of Commissioners on Uniform State Laws.**

*In 1997, the Uniform Law Commissioners promulgated a new Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). The UCCJEA replaces the UCCJA and does two very important things: it reconciles UCCJA principles with the PKPA and it adds interstate civil enforcement for child custody orders. The impact of these changes in the UCCJEA from the UCCJA is to reinforce the impact of the PKPA. Priority for home state jurisdiction, continuing exclusive jurisdiction and temporary emergency jurisdiction mean that orders made pursuant to the UCCJEA will have the full weight of the Full Faith and Credit Clause of the U.S. Constitution behind them.*

## PARENTAL KIDNAPPING PREVENTION ACT OF 1980 (PKPA)

### [SYNOPSIS]

**Source of material: Legal Remedies in Parental Kidnapping Cases: A Collection of Materials, Patricia M. Hoff, Esq., National Legal Resource Center for Child Advocacy and Protection, American Bar Association.**

*Congress enacted the PKPA in December 1980 based upon findings that parental kidnapping has harmful effects on children and courts in different states have difficulties resolving the jurisdictional conflicts that often ensue in custody contests.*

*The findings and purposes set forth in Section 7 of Pub. L. No. 96-611 bear a striking similarity to those contained in the Uniform Child Custody Jurisdiction Act, namely, to promote cooperation among the states in recognition and enforcement of custody and visitation orders, to discourage continuing interstate controversies and conflicts, and to deter abductions. The difference of this law lies in the fact that Congress for the first time assumed a federal role in facilitating the resolution to the conflict between states which are inherent in interstate child custody disputes.*

## VISITATION RIGHTS ENFORCEMENT ACT

### TITLE 28 ❖ JUDICIARY AND JUDICIAL PROCEDURE CHAPTER 115 ❖ EVIDENCE; DOCUMENTARY

#### 28 USC §1738A ❖ FULL FAITH AND CREDIT GIVEN TO CHILD CUSTODY DETERMINATIONS

- (a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsections (f), (g), and (h) of this section, any custody determination or visitation determination made consistently with the provisions of this section by a court of another State.
- (b) As used in this section, the term—
  - (1) “child” means a person under the age of eighteen;
  - (2) “contestant” means a person, including a parent or grandparent, who claims a right to custody or visitation of a child;
  - (3) “custody determination” means a judgment, decree, or other order of a court providing for the custody of a child, and includes permanent and temporary orders, and initial orders and modifications;
  - (4) “home State” means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period;
  - (5) “modification” and “modify” refer to a custody or visitation determination which modifies, replaces, supersedes, or otherwise is made subsequent to, a prior custody or visitation determination concerning the same child, whether made by the same court or not;

- (6) “person acting as a parent” means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;
  - (7) “physical custody” means actual possession and control of a child;
  - (8) “State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States; and
  - (9) “visitation determination” means a judgment, decree, or other order of a court providing for the visitation of a child and includes permanent and temporary orders and initial orders and modifications.
- (c) A child custody or visitation determination made by a court of a State is consistent with the provisions of this section only if—
- (1) such court has jurisdiction under the law of such State; and
  - (2) one of the following conditions is met:
    - (A) such State
      - (i) is the home State of the child on the date of the commencement of the proceeding, or
      - (ii) had been the child’s home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;
    - (B) (i) it appears that no other State would have jurisdiction under subparagraph (A), and
      - (ii) it is in the best interest of the child that a court of such State assume jurisdiction because
        - (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and
        - (II) there is available in such State substantial evidence concerning the child’s present or future care, protection, training, and personal relationships;
    - (C) the child is physically present in such State and
      - (i) the child has been abandoned, or
      - (ii) it is necessary in an emergency to protect the child because the child, a sibling, or parent of the child has been subjected to or threatened with mistreatment or abuse;
    - (D) (i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody or visitation of the child, and
      - (ii) it is in the best interest of the child that such court assume jurisdiction; or
    - (E) the court has continuing jurisdiction pursuant to subsection (d) of this section.
- (d) The jurisdiction of a court of a State which has made a child custody or visitation determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.
- (e) Before a child custody or visitation determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.
- (f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if—
- (1) it has jurisdiction to make such a child custody determination; and
  - (2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.
- (g) A court of a State shall not exercise jurisdiction in any proceeding for a custody or visitation determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody determination.
- (h) A court of a State may not modify a visitation determination made by a court of another State unless the court of the other State no longer has jurisdiction to modify such determination or has declined to exercise jurisdiction to modify such determination.

**TITLE 42 ❖ THE PUBLIC HEALTH AND WELFARE  
CHAPTER 7 ❖ SOCIAL SECURITY ACT**

**42 USC §663 ❖ USE OF FEDERAL PARENT LOCATOR SERVICE IN CONNECTION WITH THE ENFORCEMENT OR DETERMINATION OF CHILD CUSTODY AND IN CASES OF PARENTAL KIDNAPING OF A CHILD**

- (a) Agreements with States for use of Federal Parent Locator Service. The Secretary shall enter into an agreement with every State under which the services of the Federal Parent Locator Service established under section 653 shall be made available to each State for the purpose of determining the whereabouts of any parent or child when such information is to be used to locate such parent or child for the purpose of—

- (1) enforcing any state or federal law with respect to the unlawful taking or restraint of a child; or
  - (2) making or enforcing a child custody or visitation determination.
- (b) Requests from authorized persons for information. An agreement entered into under subsection (a) shall provide that the State agency described in section 654 will, under procedures prescribed by the Secretary in regulations, receive and transmit to the Secretary requests from authorized persons for information as to (or useful in determining) the whereabouts of any parent or child when such information is to be used to locate such parent or child for the purpose of—
- (1) enforcing any state or federal law with respect to the unlawful taking or restraint of a child; or
  - (2) making or enforcing a child custody or visitation determination.
- (c) Information which may be disclosed. Information authorized to be provided by the Secretary under subsection (a), (b), (e), or (f) shall be subject to the same conditions with respect to disclosure as information authorized to be provided under section 653, and a request for information by the Secretary under this section shall be considered to be a request for information under section 653 which is authorized to be provided under such section. Only information as to the most recent address and place of employment of any parent or child shall be provided under this section.
- (d) “Custody determination” and “authorized person” defined. For purposes of this section—
- (1) the term “custody or visitation determination” means a judgment, decree, or other order of a court providing for the custody or visitation of a child, and includes permanent and temporary orders, and initial orders and modification;
  - (2) the term “authorized person” means—
    - (A) any agent or attorney of any State having an agreement under this section, who has the duty or authority under the law of such State to enforce a child custody or visitation determination;
    - (B) any court having jurisdiction to make or enforce such a child custody or visitation determination, or any agent of such court; and
    - (C) any agent or attorney of the United States, or of a State having an agreement under this section, who has the duty or authority to investigate, enforce, or bring a prosecution with respect to the unlawful taking or restraint of a child.
- (e) Services of Federal Parent Locator Service made available to Central Authority. The Secretary shall enter into an agreement with the Central Authority designated by the President in accordance with section 7 of the International Child Abduction Remedies Act [42 USC § 11606] under which the services of the Federal Parent Locator Service established under section 653 shall be made available to such Central Authority upon its request for the purpose of locating any parent or child on behalf of an applicant to such Central Authority within the meaning of section 3(1) of that Act [42 USC § 11602(1)]. The Federal Parent Locator Service shall charge no fees for services requested pursuant to this subsection.
- (f) Services of Federal Parent Locator Service made available to Office of Juvenile Justice and Delinquency Prevention. The Secretary shall enter into an agreement with the Attorney General of the United States, under which the services of the Federal Parent Locator Service established under section 653 shall be made available to the Office of Juvenile Justice and Delinquency Prevention upon its request to locate any parent or child on behalf of such Office for the purpose of—
- (1) enforcing any state or federal law with respect to the unlawful taking or restraint of a child, or
  - (2) making or enforcing a child custody or visitation determination.
- The Federal Parent Locator Service shall charge no fees for services requested pursuant to this subsection.

**TITLE 18 ❖ CRIMES AND CRIMINAL PROCEDURE**  
**CHAPTER 49 ❖ FUGITIVES FROM JUSTICE**

**18 USC §1073 ❖ FLIGHT TO AVOID PROSECUTION OR GIVING TESTIMONY** Whoever moves or travels in interstate or foreign commerce with intent either

- (1) to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which he flees, for a crime, or an attempt to commit a crime, punishable by death or which is a felony under the laws of the place from which the fugitive flees, or
- (2) to avoid giving testimony in any criminal proceedings in such place in which the commission of an offense punishable by death or which is a felony under the laws of such place, is charged, or
- (3) to avoid service of, or contempt proceedings for alleged disobedience of, lawful process requiring attendance and the giving of testimony or the production of documentary evidence before an agency of a State empowered by the law of such State to conduct investigations of alleged criminal activities, shall be fined under this title or imprisoned not more than five years, or both. For the purposes of clause (3) of this paragraph, the term “State”



includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

Violations of this section may be prosecuted only in the federal judicial district in which the original crime was alleged to have been committed, or in which the person was held in custody or confinement, or in which an avoidance of service of process or a contempt referred to in clause (3) of the first paragraph of this section is alleged to have been committed, and only upon formal approval in writing by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or an Assistant Attorney General of the United States, which function of approving prosecutions may not be delegated.

## **MISSING CHILDREN ACT (MCA)**

### **[SYNOPSIS]**

**Source of material: Legal Remedies in Parental Kidnapping Cases: A Collection of Materials, Patricia M. Hoff, Esq., National Legal Resource Center for Child Advocacy and Protection, American Bar Association.**

*On October 12, 1982, the Missing Children Act (Pub.L.No.97-292) was signed into law. Parents of missing children – children abducted by strangers as well as by parents and children who have simply disappeared – succeeded through federal law in securing access to the FBI-operated National Crime Information Center (NCIC) computer system, a potentially valuable tool for interstate location of missing persons and identification of deceased individuals. Contrary to its name, Missing Children Act applies to any missing person – adults and children alike.*

*Under this federal law, state and local law enforcement authorities (police, sheriffs and prosecutors) can enter complete descriptions of abducted children in the FBI's NCIC computer system whether or not the abductor has been charged with a crime. The law expressly requires the U.S. Attorney General through the FBI to "acquire, collect, and preserve" any descriptive information it receives on a missing child, including children who are kidnapped by their parents, and further requires the FBI "to provide confirmation as to any entry for such a person to the parent, legal guardian or next of kin" 28 USC 534(a)(2),(3).*

## **TITLE 28 ❖ JUDICIARY AND JUDICIAL PROCEDURE CHAPTER 33 ❖ FEDERAL BUREAU OF INVESTIGATION**

### **28 USC §534 ❖ ACQUISITION, PRESERVATION, AND EXCHANGE OF IDENTIFICATION RECORDS AND INFORMATION; APPOINTMENT OF OFFICIALS**

- (a) The Attorney General shall—
- (1) acquire, collect, classify, and preserve identification, criminal identification, crime, and other records;
  - (2) acquire, collect, classify, and preserve any information which would assist in the identification of any deceased individual who has not been identified after the discovery of such deceased individual;
  - (3) acquire, collect, classify, and preserve any information which would assist in the location of any missing person (including an unemancipated person as defined by the laws of the place of residence of such person) and provide confirmation as to any entry for such a person to the parent, legal guardian, or next of kin of that person (and the Attorney General may acquire, collect, classify, and preserve such information from such parent, guardian, or next of kin); and
  - (4) exchange such records and information with, and for the official use of, authorized officials of the Federal Government, including the United States Sentencing Commission, the States, cities, and penal and other institutions.
- (b) The exchange of records and information authorized by subsection (a)(4) of this section is subject to cancellation if dissemination is made outside the receiving departments or related agencies.
- (c) The Attorney General may appoint officials to perform the functions authorized by this section.
- (d) For purposes of this section, the term "other institutions" includes—
- (1) railroad police departments which perform the administration of criminal justice and have arrest powers pursuant to a State statute, which allocate a substantial part of their annual budget to the administration of criminal justice, and which meet training requirements established by law or ordinance for law enforcement officers; and
  - (2) police departments of private colleges or universities which perform the administration of criminal justice and have arrest powers pursuant to a State statute, which allocate a substantial part of their annual budget to the administration of criminal justice, and which meet training requirements established by law or ordinance for law enforcement officers.

- (e) (1) Information from national crime information databases consisting of identification records, criminal history records, protection orders, and wanted person records may be disseminated to civil or criminal courts for use in domestic violence or stalking cases. Nothing in this subsection shall be construed to permit access to such records for any other purpose.
- (2) federal and state criminal justice agencies authorized to enter information into criminal information databases may include—
  - (A) arrests, convictions, and arrest warrants for stalking or domestic violence or for violations of protection orders for the protection of parties from stalking or domestic violence; and
  - (B) protection orders for the protection of persons from stalking or domestic violence, provided such orders are subject to periodic verification.
- (3) As used in this subsection—
  - (A) the term “national crime information databases” means the National Crime Information Center and its incorporated criminal history databases, including the Interstate Identification Index; and
  - (B) the term “protection order” includes an injunction or any other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including temporary and final orders issued by civil or criminal courts (other than support or child custody orders) whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

## **HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION**

### **[SYNOPSIS]**

**Source of material: Patricia M. Hoff, Esquire, Family Abduction Prevention and Response, 5th ed.  
Alexandria, Virginia: Department of Justice, 2002.**

*The Hague Convention on the Civil Aspects of International Child Abduction provides a private right of action to seek the prompt return of a child who has been wrongfully removed or retained within the meaning of the Hague Convention when the child is younger than 16 and the two countries involved are both parties to the Hague Convention. Courts may order a child returned even if there is a defense to return under the Hague Convention.*

*The Hague Convention took effect in the United States in 1988 following its ratification and enactment of a federal implementing statute, the International Child Abduction Remedies Act, 42 USC §§ 11601-11610. ICARA establishes procedures for bringing legal action for the return of children who have been wrongfully removed to or retrained in the U.S. If a child has been abducted to another country, the parent must follow procedures established by that country to invoke the Hague Convention.*

**See Texas Family Code, Section 152.302, Enforcement Under Hague Convention**

## **INTERNATIONAL CHILD ABDUCTION REMEDIES ACT (ICARA)**

### **[SYNOPSIS]**

**Source of material: Patricia M. Hoff, Esquire, Family Abduction, 4th ed.  
Arlington, Virginia: Department of Justice, 1994.**

*Passed in 1988, the International Child Abduction Remedies Act establishes procedures to implement the provisions of the treaty called the Hague Convention on the Civil Aspects of International Child Abduction in the United States, which governs the return of international abducted children. This Act requires the President to designate a federal agency as the central authority for administration of the treaty provisions within the United States. It empowers State and federal courts to hear cases for the return of children who have been abducted from foreign countries to the United States and authorizes the courts to protect the well-being of the child and to prevent the child's further removal or concealment. The United States central authority is authorized to have access to information in certain American records pertaining to the whereabouts of an abductor or child.*

# **NATIONAL CHILD SEARCH ASSISTANCE ACT OF 1990**

## **[SYNOPSIS]**

Source of material: Patricia M. Hoff, Esquire, Family Abduction Prevention and Response, 5th ed. Alexandria, Virginia: Department of Justice, 2002.

*The National Child Search Assistance Act, 42 USC §§ 5779 and 5780, requires every federal, state, and local law-enforcement agency to report each case of a missing child younger than the age of 18 to the NCIC. The law prohibits state law-enforcement agencies from maintaining any waiting period before accepting a missing-child report and requires immediate entry of missing-child reports into both the state law-enforcement system and NCIC-MPF.*

## **TITLE 42 ❖ THE PUBLIC HEALTH AND WELFARE CHAPTER 72 ❖ JUVENILE JUSTICE AND DELINQUENCY PREVENTION MISSING CHILDREN**

### **42 USC §5779 ❖ REPORTING REQUIREMENT — SUZANNE’S LAW**

*This law now requires federal, state, and local law enforcement to report to NCIC each case of a missing child under the age of 21. This law removes the ambiguity about 17 year olds.*

- (a) In general. Each federal, state, and local law enforcement agency shall report each case of a missing child under the age of 21 reported to such agency to the National Crime Information Center of the Department of Justice.
- (b) Guidelines. The Attorney General may establish guidelines for the collection of such reports including procedures for carrying out the purposes of this Act.
- (c) Annual summary. The Attorney General shall publish an annual statistical summary of the reports received under this title.

### **42 USC §5780 ❖ STATE REQUIREMENTS**

Each State reporting under the provisions of this title shall—

- (1) ensure that no law enforcement agency within the State establishes or maintains any policy that requires the observance of any waiting period before accepting a missing child or unidentified person report;
- (2) provide that each such report and all necessary and available information, which, with respect to each missing child report, shall include—
  - (A) the name, date of birth, sex, race, height, weight, and eye and hair color of the child;
  - (B) the date and location of the last known contact with the child; and
  - (C) the category under which the child is reported missing; is entered immediately into the State law enforcement system and the National Crime Information Center computer networks and made available to the Missing Children Information Clearinghouse within the State or other agency designated within the State to receive such reports; and
- (3) provide that after receiving reports as provided in paragraph (2), the law enforcement agency that entered the report into the National Crime Information Center shall—
  - (A) no later than 60 days after the original entry of the record into the State law enforcement system and National Crime Information Center computer networks, verify and update such record with any additional information, including, where available, medical and dental records;
  - (B) institute or assist with appropriate search and investigative procedures; and
  - (C) maintain close liaison with the National Center for Missing and Exploited Children for the exchange of information and technical assistance in the missing children cases.

## **FEDERAL KIDNAPPING ACT**

### **TITLE 18 ❖ CRIMES AND CRIMINAL PROCEDURE CHAPTER 55 ❖ KIDNAPPING**

#### **18 USC §1201 ❖ KIDNAPPING**

- (a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when—
  - (1) the person is willfully transported in interstate or foreign commerce, regardless of whether the person was alive

- when transported across a State boundary if the person was alive when the transportation began;
- (2) any such act against the person is done within the special maritime and territorial jurisdiction of the United States;
  - (3) any such act against the person is done within the special aircraft jurisdiction of the United States as defined in section 46501 of title 49;
  - (4) the person is a foreign official, an internationally protected person, or an official guest as those terms are defined in section 1116(b) of this title [18 USCS § 1116(b)]; or
  - (5) the person is among those officers and employees described in section 1114 of this title [18 USCS § 1114] and any such act against the person is done while the person is engaged in, or on account of, the performance of official duties; shall be punished by imprisonment for any term of years or for life and, if the death of any person results, shall be punished by death or life imprisonment.
- (b) With respect to subsection (a)(1), above, the failure to release the victim within twenty-four hours after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away shall create a rebuttable presumption that such person has been transported in interstate or foreign commerce. Notwithstanding the preceding sentence, the fact that the presumption under this section has not yet taken effect does not preclude a federal investigation of a possible violation of this section before the 24-hour period has ended.
  - (c) If two or more persons conspire to violate this section and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life.
  - (d) Whoever attempts to violate subsection (a) shall be punished by imprisonment for not more than twenty years.
  - (e) If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title [18 USCS § § 5 and 7] and section 46501(2) of title 49. For purposes of this subsection, the term “national of the United States” has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).
  - (f) In the course of enforcement of subsection (a)(4) and any other sections prohibiting a conspiracy or attempt to violate subsection (a)(4), the Attorney General may request assistance from any federal, state, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.
  - (g) Special rule for certain offenses involving children.
    - (1) To whom applicable. If—
      - (A) the victim of an offense under this section has not attained the age of eighteen years; and
      - (B) the offender—
        - (i) has attained such age; and
        - (ii) is not—
          - (I) a parent;
          - (II) a grandparent;
          - (III) a brother;
          - (IV) a sister;
          - (V) an aunt;
          - (VI) an uncle; or
          - (VII) an individual having legal custody of the victim; the sentence under this section for such offense shall include imprisonment for not less than 20 years.
    - (2) [Deleted]
  - (h) As used in this section, the term “parent” does not include a person whose parental rights with respect to the victim of an offense under this section have been terminated by a final court order.

## **INTERNATIONAL PARENTAL KIDNAPPING CRIME ACT OF 1993 (IPKCA)**

### **TITLE 18 ❖ CRIMES AND CRIMINAL PROCEDURE CHAPTER 55 ❖ KIDNAPPING**

#### **18 USC §1204 ❖ INTERNATIONAL PARENTAL KIDNAPPING**

- (a) Whoever removes a child from the United States, or attempts to do so, or retains a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights shall be fined under this title or imprisoned not more than 3 years, or both.
- (b) As used in this section—

- (1) the term “child” means a person who has not attained the age of 16 years; and
- (2) the term “parental rights”, with respect to a child, means the right to physical custody of the child—
  - (A) whether joint or sole (and includes visiting rights); and
  - (B) whether arising by operation of law, court order, or legally binding agreement of the parties.
- (c) It shall be an affirmative defense under this section that—
  - (1) the defendant acted within the provisions of a valid court order granting the defendant legal custody or visitation rights and that order was obtained pursuant to the Uniform Child Custody Jurisdiction Act or the Uniform Child Custody Jurisdiction and Enforcement Act and was in effect at the time of the offense;
  - (2) the defendant was fleeing an incidence or pattern of domestic violence; or
  - (3) the defendant had physical custody of the child pursuant to a court order granting legal custody or visitation rights and failed to return the child as a result of circumstances beyond the defendant’s control, and the defendant notified or made reasonable attempts to notify the other parent or lawful custodian of the child of such circumstances within 24 hours after the visitation period had expired and returned the child as soon as possible.
- (d) This section does not detract from The Hague Convention on the Civil Aspects of International Parental Child Abduction, done at The Hague on October 25, 1980.

## **DNA IDENTIFICATION ACT OF 1994**

### **TITLE 42 ❖ THE PUBLIC HEALTH AND WELFARE CHAPTER 136 ❖ VIOLENT CRIME CONTROL AND LAW ENFORCEMENT STATE AND LOCAL LAW ENFORCEMENT DNA IDENTIFICATION**

#### **42 USC § 14132 ❖ INDEX TO FACILITATE LAW ENFORCEMENT EXCHANGE OF DNA IDENTIFICATION INFORMATION**

- (a) Establishment of index. The Director of the Federal Bureau of Investigation may establish an index of—
  - (1) DNA identification records of—
    - (A) persons convicted of crimes;
    - (B) persons who have been charged in an indictment or information with a crime; and
    - (C) other persons whose DNA samples are collected under applicable legal authorities, provided that DNA samples that are voluntarily submitted solely for elimination purposes shall not be included in the National DNA Index System;
  - (2) analyses of DNA samples recovered from crime scenes;
  - (3) analyses of DNA samples recovered from unidentified human remains; and
  - (4) analyses of DNA samples voluntarily contributed from relatives of missing persons.
- (b) Information. The index described in subsection (a) shall include only information on DNA identification records and DNA analyses that are—
  - (1) based on analyses performed by or on behalf of a criminal justice agency (or the Secretary of Defense in accordance with section 1565 of title 10, United States Code) in accordance with publicly available standards that satisfy or exceed the guidelines for a quality assurance program for DNA analysis, issued by the Director of the Federal Bureau of Investigation under section 14131;
  - (2) prepared by laboratories that—
    - (A) not later than 2 years after the date of enactment of the DNA Sexual Assault Justice Act of 2004 [enacted Oct. 30, 2004], have been accredited by a nonprofit professional association of persons actively involved in forensic science that is nationally recognized within the forensic science community; and
    - (B) undergo external audits, not less than once every 2 years, that demonstrate compliance with standards established by the Director of the Federal Bureau of Investigation; and
  - (3) maintained by federal, state, and local criminal justice agencies (or the Secretary of Defense in accordance with section 1565 of title 10, United States Code) pursuant to rules that allow disclosure of stored DNA samples and DNA analyses only—
    - (A) to criminal justice agencies for law enforcement identification purposes;
    - (B) in judicial proceedings, if otherwise admissible pursuant to applicable statutes or rules;
    - (C) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged; or
    - (D) if personally identifiable information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes.

- (c) Failure to comply. Access to the index established by this section is subject to cancellation if the quality control and privacy requirements described in subsection (b) are not met. . . .

## **JENNIFER'S LAW**

### **TITLE 42 ❖ THE PUBLIC HEALTH AND WELFARE CHAPTER 140A ❖ JENNIFER'S LAW**

#### **42 USC §14661 ❖ PROGRAM AUTHORIZED**

The Attorney General is authorized to provide grant awards to States to enable States to improve the reporting of unidentified and missing persons.

#### **42 USC §14662 ❖ ELIGIBILITY**

- (a) Application. To be eligible to receive a grant award under this title [42 USC § § 14661 et seq.], a State shall submit an application at such time and in such form as the Attorney General may reasonably require.
- (b) Contents. Each such application shall include assurances that the State shall, to the greatest extent possible—
- (1) report to the National Crime Information Center and when possible, to law enforcement authorities throughout the State regarding every deceased unidentified person, regardless of age, found in the State's jurisdiction;
  - (2) enter a complete profile of such unidentified person in compliance with the guidelines established by the Department of Justice for the National Crime Information Center Missing and Unidentified Persons File, including dental records, DNA records, x-rays, and fingerprints, if available;
  - (3) enter the National Crime Information Center number or other appropriate number assigned to the unidentified person on the death certificate of each such unidentified person; and
  - (4) retain all such records pertaining to unidentified persons until a person is identified.

## **PROSECUTORIAL REMEDIES AND OTHER TOOLS TO END THE EXPLOITATION OF CHILDREN TODAY (PROTECT) ACT OF 2003**

### **TITLE 18 ❖ CRIMES AND CRIMINAL PROCEDURE CHAPTER 203 ❖ ARREST AND COMMITMENT**

#### **18 USC §3056 ❖ POWERS, AUTHORITIES, AND DUTIES OF UNITED STATES SECRET SERVICE . . . .**

- (f) Under the direction of the Secretary of Homeland Security, officers and agents of the Secret Service are authorized, at the request of any State or local law enforcement agency, or at the request of the National Center for Missing and Exploited Children, to provide forensic and investigative assistance in support of any investigation involving missing or exploited children.

## **AMBER ALERT**

### **TITLE 42 ❖ THE PUBLIC HEALTH AND WELFARE CHAPTER 72 ❖ JUVENILE JUSTICE AND DELINQUENCY PREVENTION PUBLIC OUTREACH AMBER ALERT**

#### **42 USC §5791 ❖ NATIONAL COORDINATION OF AMBER ALERT COMMUNICATIONS NETWORK**

- (a) Coordination within Department of Justice. The Attorney General shall assign an officer of the Department of Justice to act as the national coordinator of the AMBER Alert communications network regarding abducted children. The officer so designated shall be known as the AMBER Alert Coordinator of the Department of Justice.
- (b) Duties. In acting as the national coordinator of the AMBER Alert communications network, the Coordinator shall—
- (1) seek to eliminate gaps in the network, including gaps in areas of interstate travel;
  - (2) work with States to encourage the development of additional elements (known as local AMBER plans) in the network;
  - (3) work with States to ensure appropriate regional coordination of various elements of the network; and
  - (4) act as the nationwide point of contact for—
    - (A) the development of the network; and

- (B) regional coordination of alerts on abducted children through the network.
- (c) Consultation with Federal Bureau of Investigation. In carrying out duties under subsection (b), the Coordinator shall notify and consult with the Director of the Federal Bureau of Investigation concerning each child abduction for which an alert is issued through the AMBER Alert communications network.
- (d) Cooperation. The Coordinator shall cooperate with the Secretary of Transportation and the Federal Communications Commission in carrying out activities under this section.
- (e) Report. Not later than March 1, 2005, the Coordinator shall submit to Congress a report on the activities of the Coordinator and the effectiveness and status of the AMBER plans of each State that has implemented such a plan. The Coordinator shall prepare the report in consultation with the Secretary of Transportation.

**42 USC §5791a ❖ MINIMUM STANDARDS FOR ISSUANCE AND DISSEMINATION OF ALERTS THROUGH AMBER ALERT COMMUNICATIONS NETWORK**

- (a) Establishment of minimum standards. Subject to subsection (b), the AMBER Alert Coordinator of the Department of Justice shall establish minimum standards for—
  - (1) the issuance of alerts through the AMBER Alert communications network; and
  - (2) the extent of the dissemination of alerts issued through the network.
- (b) Limitations.
  - (1) The minimum standards established under subsection (a) shall be adoptable on a voluntary basis only.
  - (2) The minimum standards shall, to the maximum extent practicable (as determined by the Coordinator in consultation with State and local law enforcement agencies), provide that appropriate information relating to the special needs of an abducted child (including health care needs) are disseminated to the appropriate law enforcement, public health, and other public officials.
  - (3) The minimum standards shall, to the maximum extent practicable (as determined by the Coordinator in consultation with State and local law enforcement agencies), provide that the dissemination of an alert through the AMBER Alert communications network be limited to the geographic areas most likely to facilitate the recovery of the abducted child concerned.
  - (4) In carrying out activities under subsection (a), the Coordinator may not interfere with the current system of voluntary coordination between local broadcasters and State and local law enforcement agencies for purposes of the AMBER Alert communications network.
- (c) Cooperation.
  - (1) The Coordinator shall cooperate with the Secretary of Transportation and the Federal Communications Commission in carrying out activities under this section.
  - (2) The Coordinator shall also cooperate with local broadcasters and State and local law enforcement agencies in establishing minimum standards under this section.

**42 USC §5791b ❖ GRANT PROGRAM FOR NOTIFICATION AND COMMUNICATIONS SYSTEMS ALONG HIGHWAYS FOR RECOVERY OF ABDUCTED CHILDREN**

- (a) Program required. The Secretary of Transportation shall carry out a program to provide grants to States for the development or enhancement of notification or communications systems along highways for alerts and other information for the recovery of abducted children.
- (b) Development grants.
  - (1) In general. The Secretary may make a grant to a State under this subsection for the development of a State program for the use of changeable message signs or other motorist information systems to notify motorists about abductions of children. The State program shall provide for the planning, coordination, and design of systems, protocols, and message sets that support the coordination and communication necessary to notify motorists about abductions of children.
  - (2) Eligible activities. A grant under this subsection may be used by a State for the following purposes:
    - (A) To develop general policies and procedures to guide the use of changeable message signs or other motorist information systems to notify motorists about abductions of children.
    - (B) To develop guidance or policies on the content and format of alert messages to be conveyed on changeable message signs or other traveler information systems.
    - (C) To coordinate State, regional, and local plans for the use of changeable message signs or other transportation related issues.
    - (D) To plan secure and reliable communications systems and protocols among public safety and transportation agencies or modify existing communications systems to support the notification of motorists about abductions of children.

- (E) To plan and design improved systems for communicating with motorists, including the capability for issuing wide area alerts to motorists.
  - (F) To plan systems and protocols to facilitate the efficient issuance of child abduction notification and other key information to motorists during off-hours.
  - (G) To provide training and guidance to transportation authorities to facilitate appropriate use of changeable message signs and other traveler information systems for the notification of motorists about abductions of children.
- (c) Implementation grants.
- (1) In general. The Secretary may make a grant to a State under this subsection for the implementation of a program for the use of changeable message signs or other motorist information systems to notify motorists about abductions of children. A State shall be eligible for a grant under this subsection if the Secretary determines that the State has developed a State program in accordance with subsection (b).
  - (2) Eligible activities. A grant under this subsection may be used by a State to support the implementation of systems that use changeable message signs or other motorist information systems to notify motorists about abductions of children. Such support may include the purchase and installation of changeable message signs or other motorist information systems to notify motorists about abductions of children.
- (d) Federal share. The Federal share of the cost of any activities funded by a grant under this section may not exceed 80 percent.
- (e) Distribution of grant amounts. The Secretary shall, to the maximum extent practicable, distribute grants under this section equally among the States that apply for a grant under this section within the time period prescribed by the Secretary.
- (f) Administration. The Secretary shall prescribe requirements, including application requirements, for the receipt of grants under this section.
- (g) Definition. In this section, the term "State" means any of the 50 States, the District of Columbia, or Puerto Rico.
- (h) Authorization of appropriations. There is authorized to be appropriated to the Secretary to carry out this section \$ 20,000,000 for fiscal year 2004. Such amounts shall remain available until expended.
- (i) Study of State programs.
- (1) Study. The Secretary shall conduct a study to examine State barriers to the adoption and implementation of State programs for the use of communications systems along highways for alerts and other information for the recovery of abducted children.
  - (2) Report. Not later than 1 year after the date of enactment of this Act [enacted April 30, 2003], the Secretary shall transmit to Congress a report on the results of the study, together with any recommendations the Secretary determines appropriate.

**42 USC §5791c ❖ GRANT PROGRAM FOR SUPPORT OF AMBER ALERT COMMUNICATIONS PLANS**

- (a) Program required. The Attorney General shall carry out a program to provide grants to States for the development or enhancement of programs and activities for the support of AMBER Alert communications plans.
- (b) Activities. Activities funded by grants under the program under subsection (a) may include—
  - (1) the development and implementation of education and training programs, and associated materials, relating to AMBER Alert communications plans;
  - (2) the development and implementation of law enforcement programs, and associated equipment, relating to AMBER Alert communications plans;
  - (3) the development and implementation of new technologies to improve AMBER Alert communications; and
  - (4) such other activities as the Attorney General considers appropriate for supporting the AMBER Alert communications program.
- (c) Federal share. The Federal share of the cost of any activities funded by a grant under the program under subsection (a) may not exceed 50 percent.
- (d) Distribution of grant amounts on geographic basis. The Attorney General shall, to the maximum extent practicable, ensure the distribution of grants under the program under subsection (a) on an equitable basis throughout the various regions of the United States.
- (e) Administration. The Attorney General shall prescribe requirements, including application requirements, for grants under the program under subsection (a).
- (f) Authorization of appropriations.
  - (1) There is authorized to be appropriated for the Department of Justice \$ 5,000,000 for fiscal year 2004 to carry out this section and, in addition, \$ 5,000,000 for fiscal year 2004 to carry out subsection (b)(3).
  - (2) Amounts appropriated pursuant to the authorization of appropriations in paragraph (1) shall remain available until expended.



## **CODE ADAM ACT OF 2003**

### **TITLE 42 ❖ THE PUBLIC HEALTH AND WELFARE CHAPTER 72 ❖ JUVENILE JUSTICE AND DELINQUENCY PREVENTION PUBLIC OUTREACH MISSING CHILDREN PROCEDURES IN PUBLIC BUILDINGS**

**42 USC §5792 ❖ DEFINITIONS** In this subtitle [42 USC § § 5792 et seq.], the following definitions apply:

- (1) Child. The term “child” means an individual who is 17 years of age or younger.
- (2) Code Adam alert. The term “Code Adam alert” means a set of procedures used in public buildings to alert employees and other users of the building that a child is missing.
- (3) Designated authority. The term “designated authority” means—
  - (A) with respect to a public building owned or leased for use by an Executive agency—
    - (i) except as otherwise provided in this paragraph, the Administrator of General Services;
    - (ii) in the case of the John F. Kennedy Center for the Performing Arts, the Board of Trustees of the John F. Kennedy Center for the Performing Arts;
    - (iii) in the case of buildings under the jurisdiction, custody, and control of the Smithsonian Institution, the Board of Regents of the Smithsonian Institution; or
    - (iv) in the case of another public building for which an Executive agency has, by specific or general statutory authority, jurisdiction, custody, and control over the building, the head of that agency;
  - (B) with respect to the Supreme Court Building, the Marshal of the Supreme Court; with respect to the Thurgood Marshall Federal Judiciary Building, the Director of the Administrative Office of United States Courts; and with respect to all other public buildings owned or leased for use by an establishment in the judicial branch of government, the General Services Administration in consultation with the United States Marshals Service; and
  - (C) with respect to a public building owned or leased for use by an establishment in the legislative branch of government, the Capitol Police Board.
- (4) Executive agency. The term “Executive agency” has the same meaning such term has under section 105 of title 5, United States Code.
- (5) Federal agency. The term “Federal agency” means any Executive agency or any establishment in the legislative or judicial branches of the Government.
- (6) Public building. The term “public building” means any building (or portion thereof) owned or leased for use by a Federal agency.

#### **42 USC §5792a ❖ PROCEDURES IN PUBLIC BUILDINGS REGARDING A MISSING OR LOST CHILD**

- (a) In general. Not later than 180 days after the date of enactment of this Act [enacted April 30, 2003], the designated authority for a public building shall establish procedures for locating a child that is missing in the building.
- (b) Notification and search procedures. Procedures established under this section shall provide, at a minimum, for the following:
  - (1) Notifying security personnel that a child is missing.
  - (2) Obtaining a detailed description of the child, including name, age, eye and hair color, height, weight, clothing, and shoes.
  - (3) Issuing a Code Adam alert and providing a description of the child, using a fast and effective means of communication.
  - (4) Establishing a central point of contact.
  - (5) Monitoring all points of egress from the building while a Code Adam alert is in effect.
  - (6) Conducting a thorough search of the building.
  - (7) Contacting local law enforcement.
  - (8) Documenting the incident.

### **ADAM WALSH CHILD PROTECTION AND SAFETY ACT OF 2006**

The Adam Walsh Child Protection and Safety Act of 2006 was enacted by the 109th Congress to protect children from sexual exploitation and violent crime, to prevent child abuse and child pornography, to promote internet safety, and to honor the memory of Adam Walsh and other child crime victims. Refer to H.R. 4472, Federal Statute 42 USC 16901.

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