



STUDY ON CERTAIN JUVENILE JUSTICE ISSUES

As directed by HB 1204, 85th Legislature

(Due 12/1/18)



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Introduction

Background

The 85th Legislature's House Bill 1204 directed the Office of Court Administration (OCA) to conduct a study on the use of the terms "juvenile," "child," and "minor" throughout the criminal justice and juvenile justice statutes of Texas and the varying definitions assigned to those terms. The bill also instructed OCA to determine:

- Whether adjudication under the adult criminal justice system of juveniles charged with misdemeanors punishable by fine only is just and efficient; and
- Whether certain procedures under the juvenile justice system, if used in the adjudication of juveniles charged with misdemeanors punishable by fine only, would provide a more just and efficient process for responding to violations of the law by juvenile offenders.

House Bill 1204 also required OCA staff, during the study period, to consult with the Senate Criminal Justice Committee Chair, the House Juvenile Justice and Family Issues Chair, and the House Corrections Chair.

Report Format

This report is organized into two sections. The first section, a review of the terms "juvenile," "child," and "minor," contains a chart illustrating the various age ranges attached to these terms as well as observations about definitions and usage. A summary of OCA's terms review can be found in Appendix A of this report. The second section of the report, a two-pronged policy inquiry into the adjudication of juveniles charged with a Class C/fine-only offense in the adult criminal justice system, examines the volume of non-traffic, Class C/fine-only cases filed against juveniles in justice and municipal courts, and suggests possible enhancements to the current system.

Terms Review

Methodology

As part of its inquiry into the terms “juvenile,” “child,” and “minor” (hereinafter “HB 1204 terms”), OCA staff reviewed the Alcoholic Beverage Code, the Code of Criminal Procedure, the Penal Code, the Education Code, the Family Code, the Government Code, the Health and Safety Code, the Human Resources Code, and the Transportation Code. OCA staff did not delve into the legislative intent surrounding the HB 1204 terms but instead focused on existing definitions and usage, homing in on terms as they distinguished adults from non-adults rather than account for every appearance of a term as a modifier (“juvenile justice facility,” “juvenile court,” “juvenile board,” etc.).

Observations

Some of the most striking features of the HB 1204 terms need to be stated at the outset of this analysis: unitary definition of terms does not exist, and consistent use of terms is not the norm. Table 1, below, illustrates the expansiveness of the HB 1204 terms as they are defined in the several codes. Table 1 is a sample of definitions and ages in the Texas criminal justice and juvenile justice statutes, not an exhaustive list. A compendium of OCA’s definitional findings can be found in Appendix A of this report.










In addition to a lack of a unitary definition and a lack of consistency in use, OCA makes the following general observations about the HB 1204 terms:

- Some terms surface without statutory definition. For example, the term “juvenile” appears in the Health and Safety Code (including in other term definitions¹) without a definition in the Code.
- Terms appear in the same provision, sometimes side-by-side.²

¹ See, e.g., TEX. HEALTH AND SAFETY CODE §89.101(2): “‘Offender’ means a *juvenile* or adult who is arrested or charged with a criminal offense” (emphasis added).

² See TEX. HEALTH AND SAFETY CODE §591.011 (discussing the Department of Aging and Disability Services’ responsibilities to provide support services to persons with intellectual disabilities committed into the care of the Department’s custody by a court and instructing the Department to provide “a continuum of services” to both “children” and “juveniles”).

Table 1. Variety of Age Applications for HB 1204 Terms

CODE		“CHILD”	“JUVENILE”	“MINOR”
ALCOHOLIC BEVERAGE CODE		Between ages 10 – 17 Between ages 17 – 18, if alleged / found to be engaged in delinquent conduct before age 17	No Reference	Under age 21
EDUCATION CODE		Student between ages 10 – 18 Non-married person under 18 Between ages 6 – 19 (for school attendance)	No Reference	Under age 18
FAMILY CODE		Between ages 10 – 17 Between ages 17 – 18, if alleged / found to be engaged in delinquent conduct before age 17 Up to age 19, if on determinate sentence probation Between ages 12 – 19 Non-married person under age 18 Between ages 7 – 17	Used Without Reference to Age Range	Under age 18
GOVERNMENT CODE			No Reference	Under age 18
HEALTH AND SAFETY CODE		Under age 18	Used Without Reference to Age Range	Under age 18
HUMAN RESOURCES CODE		Between ages 10 – 18, if under juvenile court jurisdiction Between ages 10 – 19, if committed to TJJD Under age 18	Between ages 10 – 18	No Reference
PENAL CODE		10 – 18 if under juvenile court jurisdiction Between ages 10 – 19 if committed to TJJD Between ages 10 – 17	No Reference	No Reference
TRANSPORTATION CODE		Between ages 10 – 17 Between ages 17 – 18, if alleged / found to be engaged in delinquent conduct before age 17	No Reference	Under age 21
CODE OF CRIMINAL PROCEDURE		Between ages 10 – 17 Between ages 17 – 18, if alleged / found to be engaged in delinquent conduct before age 17 Younger than age 17 Between ages 10 – 17 Non-married person under age 18	No Reference	No Reference

- There is significant cross-reference to the HB 1204 terms in the Family Code and Code of Criminal Procedure by other codes.
- Texas statutory law plially uses the term “child.” For example, the Code of Criminal Procedure alone contains multiple definitions of the term “child.”³
- As a standalone term similar to “child” or “minor,” the only reference to the term “juvenile” in the Juvenile Justice Code appears in the Uniform Interstate Compact on Juveniles.⁴ Beyond this use, the Juvenile Justice Code does not refer to the term “juvenile” to describe a justice-involved youth, using instead the term “child.”⁵
- The interplay between terms in the same code can create definitional wrinkles. Consider the following examples:
 - In the Alcoholic Beverage Code, a person can be a “minor” but not a “child”;⁶
 - In the Health and Safety Code, separate provisions define the terms “minor” and “child” but give them the same meaning;⁷

³ See Table 1 for brief summary. For more detail, see Appendix A and compare the following:

- TEX. CODE OF CRIM. PROC. ART. 14.031 (Public Intoxication), referencing the definition of “child” found in TEX. FAM. CODE §51.02(2);
- TEX. CODE OF CRIM. PROC. ART. 45.058(h) containing a standalone definition of “child”;
- TEX. CODE OF CRIM. PROC. ART. 56.32(a)(1), containing a standalone definition of “child”; and
- TEX. CODE OF CRIM. PROC. ART. 38.074, referencing the definition of “child” found in TEX. PENAL CODE §22.011(c).

⁴ See TEX. FAM. CODE Ch. 60, Uniform Interstate Compact on Juveniles. The Compact exists to govern the interstate movement of justice-involved youth. See TEX. FAM. CODE §60.010, Art. I. The Compact defines “juvenile” as “any person defined as a juvenile in any member state or by the rules of the Interstate Commission,” which includes persons accused or adjudicated as a status offender or as delinquent — *without* reference to age. TEX. FAM. CODE §60.010, Art. II, Sec. H.

⁵ TEX. FAM. CODE §51.02(2).

⁶ Compare TEX. ALCO. BEV. CODE §§106.041 and 106.071 (referencing TEX. FAM. CODE §51.02’s definition of “child”) to TEX. ALCO. BEV. CODE §106.01 (defining minor as a “person under 21 years of age”).

⁷ Compare TEX. HEALTH & SAFETY CODE §481.122 (“child”) to TEX. HEALTH & SAFETY CODE §481.134 (“minor”), which both define

- In one section of the Family Code, the terms “minor” and “child” mean the same thing;⁸
- In the Human Resources Code, separate definitions of “juvenile” and “child” largely overlap but the terms are not synonymous for all purposes.

Policy Inquiry

Methodology

House Bill 1204 required OCA to answer questions about the adjudication of juveniles charged with a Class C/fine-only offense. Specifically, the bill instructed OCA to determine: 1) whether adjudication under the adult criminal justice system of juveniles charged with misdemeanors punishable by fine only is just and efficient; and 2) whether certain procedures under the juvenile justice system, if used in the adjudication of juveniles charged with misdemeanors punishable by fine only, would provide a more just and efficient process for responding to violations of the law by juvenile offenders.

In June 2017, Texas Supreme Court Chief Justice Nathan Hecht charged the Texas Judicial Council’s Juvenile Justice Committee with overseeing the House Bill 1204 study and with recommending reforms to improve the adjudication of juveniles charged with a Class C/fine-only offense. The Committee, an Advisory Group established to inform it, and others with experience in juvenile justice procedure and programs provided helpful input on the issues under review. In May 2018, staff presented preliminary research on the HB 1204 terms and the Class C/juvenile issue to the Juvenile Justice Committee. In June 2018, the Committee released its [Juvenile Justice Report and Recommendations](#), which contained several proposed reforms addressing the needs of youth in Class C matters. Due to the intertwined nature of the House Bill 1204 study and the Committee’s recommended

the relevant term to mean “a person younger than 18 years of age.”

⁸ See TEX. FAM. CODE §101.003(a).

reforms, the materials below emanate from the Committee’s 2018 Juvenile Justice Report and Recommendations.

Juvenile Class C Misdemeanor Charges and the Adult Criminal Justice System

Under Family Code sections 51.03 and 51.04, misdemeanor charges filed against children generally qualify as “conduct indicating need for supervision” (CINS) and are heard originally and exclusively in juvenile court.⁹ This is not the case with most juvenile Class C misdemeanor (fine-only) charges. Due in part to judicial efficiency and resource concerns,¹⁰ and because of the interplay between Family Code provisions dealing with what constitutes an offense committed by a juvenile and the conditions under which cases can be transferred among courts,¹¹ Class C charges brought against juveniles exist in a fluid jurisdictional context: they begin in criminal court as criminal charges and do not become a CINS matter for juvenile courts unless transferred. As a result, most fine-only Class C cases brought against juveniles are adjudicated under the criminal jurisdiction of justice and municipal courts.

Inquiry One: Is Adjudication under the Current System “Just and Efficient?”

Changes to school-ticketing law in the 83rd Legislative Session and truancy law in the 84th Legislative Session helped reduce the number of non-traffic Class C cases filed against juveniles in justice and municipal courts. See Figure 1 below. Nevertheless, the volume of Class C charges brought against juveniles in the adult criminal court system remains high. Even after adjusting filings numbers to remove truancy and Education Code violations, over 53,000 non-traffic Class C cases were filed against juveniles in justice and municipal courts in FY17. See Figure 2 below.

⁹ See TEX. FAM. CODE §§51.03, 51.04.

¹⁰ See ROBERT DAWSON, TEXAS JUVENILE LAW 589 (7th ed. 2008). Professor Dawson’s guide suggests that Class C juvenile case jurisdiction initially sits in adult criminal court because Class C charges lack “sufficient seriousness to warrant using the specialized resources of the juvenile justice system” and because criminal courts can more quickly dispose of the cases.

¹¹ See TEX. FAM. CODE §§51.03, 51.08.

Figure 1. Non-Traffic Class C Cases Filed Against Juveniles in Justice and Municipal Courts by Fiscal Year (includes truancy and Education Code Violations) ¹²

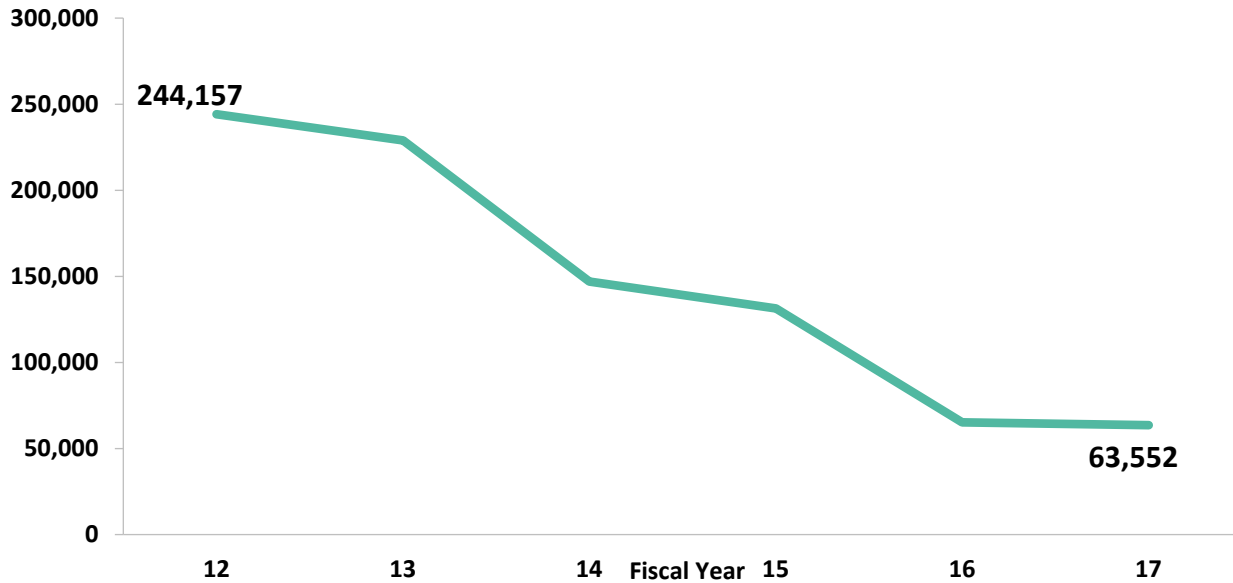
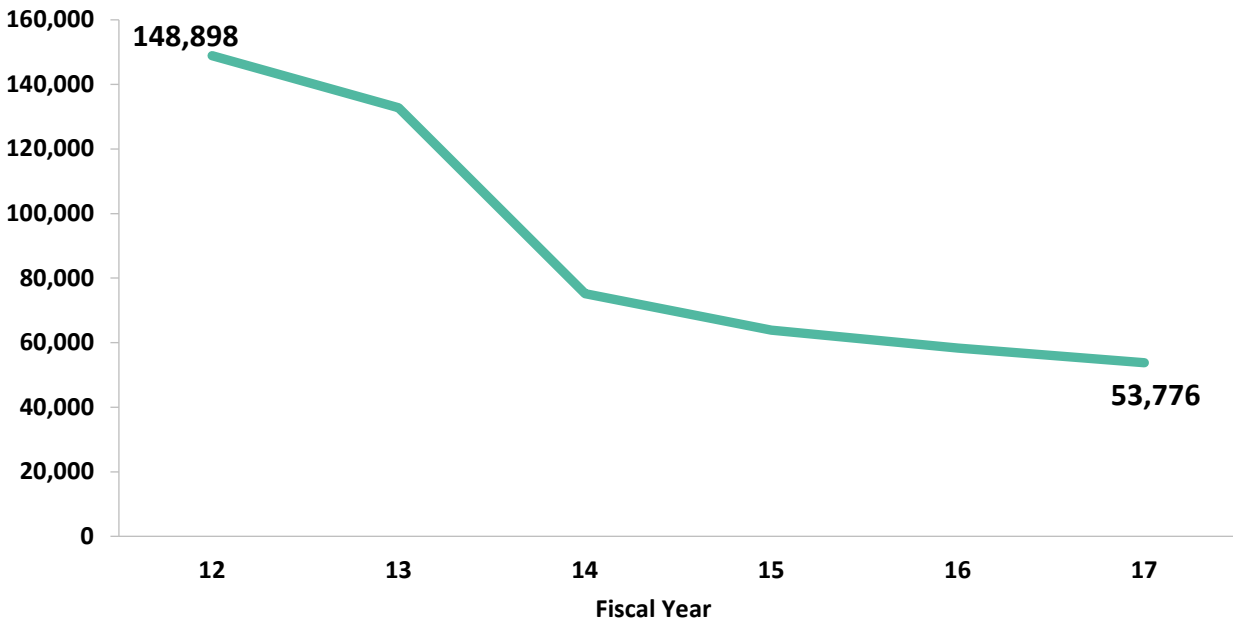


Figure 2. Non-Traffic Class C Cases Filed Against Juveniles in Justice and Municipal Courts by Fiscal Year (excludes truancy and Education Code Violations) ¹³



¹² Source: Office of Court Administration. Does not include data from the justice courts in Hidalgo County or the municipal courts in El Paso.

¹³ Source: Office of Court Administration. Does not include data from the justice courts in Hidalgo County or the municipal courts in El Paso.

Although OCA does not collect time-to-disposition data for juvenile Class C cases, the current system — by design — is oriented toward timeliness in case adjudication.¹⁴ While timely dispositions may represent efficiency, questions can be raised as to whether these dispositions are in all cases, and under all circumstances, “just.” Class C charges that originate in justice and municipal courts do not operate under the more youth-protective confines of juvenile or (civil) truancy court. Entry into the adult criminal justice system carries with it a variety of consequences and potential hazards, such as lack of appointed counsel rights, potential fines and fees that might be difficult to satisfy, and the prospect of a criminal record. Considering the long-term impact a Class C conviction can have on a youth’s future school, job, and housing prospects, plus the sheer number of Class C-charged youth interacting with the adult criminal justice system, questions about the justness of the current system can legitimately be raised.

Inquiry Two: What juvenile justice system procedures, if applied to the current Class C system, might be more just and efficient [than current system]?

In 2013 and 2015, Texas lawmakers enacted legislation aimed at limiting youth exposure to the criminal justice system, particularly in connection with school-related offenses. During the 83rd Legislative Session (2013), SB 393 and SB 1114: 1) decriminalized certain school offenses (disruption of class and disruption of transportation); 2) imposed new procedural requirements on the school-based charging process; and 3) built additional diversion pathways to keep students from entering the criminal justice system. Then, the 84th Legislature (2015) created Title 3A of the Family Code and overhauled Texas truancy law in HB 2398. The reform bill decriminalized failure to attend school, strengthened

¹⁴ See DAWSON, *supra* note 10, at 589.

truancy prevention and intervention measures, and created civil truancy courts to address the reasons for excessive school absences.

In line with the Legislature’s concerns about sending Texas children into the criminal justice system and disrupting further penetration into the system for youth who become justice-involved, potentially “just and efficient” procedures for application to the current system might include:

- Shifting adjudication of non-traffic Class C charges against juveniles into a civil system for resolution, akin to the civil truancy court method.
 - Handling non-traffic Class C/fine-only charges against youth as a civil matter in the state’s justice and municipal courts would advance a stated purpose of the Juvenile Justice Code — “to remove, where appropriate, the taint of criminality from children committing certain unlawful acts,”¹⁵ while simultaneously holding youth accountable for their actions. And for the more than 50,000 youth who currently come into contact with the adult criminal justice system every year because of a non-traffic Class C fine-only charge, the long-term risks posed by a criminal justice response to low-level juvenile misconduct would be lessened.
- Expanding the use of the juvenile case manager (JCM) in municipal and justice of the peace courts.
 - Under Code of Criminal Procedure Article 45.056, local government entities can employ a JCM to assist in administering cases involving juvenile offenders. JCMs work to deter youth from additional and possibly more serious offending, including entry into the criminal justice system. Despite the benefits offered by the JCM position, data provided to OCA by the Texas Municipal Court Education Center suggests that there

¹⁵ TEX. FAM. CODE §51.01(2)(B).

are fewer than 170 active JCM entities (county or municipal) in Texas, with most operating in or near urban or suburban areas. Amending the Code of Criminal Procedure's JCM provisions to promote and expand the role and use of juvenile case managers, including the use of regional juvenile case managers (particularly to serve rural areas of Texas), should help ensure the JCM position is used the fullest extent possible.

Conclusion

As noted in the Terms Review, a unitary definition of the HB 1204 terms does not exist, and consistent use of HB 1204 terms is not the norm. These words, as terms of art, very likely reflect policy preferences that might not be apparent at first glance and additional study may help inform decisions about whether definitional revision or term consolidation is needed. For example, the term "child" as found in the Family Code has a variety of meanings, some of which reflect policy choices about the age for which a person should be treated as an adult for criminal acts. If the Legislature attempted to unify the term in the Family Code *alone*, any changes would reverberate across multiple codes and might drive new criminal justice policy challenges. For example, Article 45.0216 of the Code of Criminal Procedure outlines the expungement of certain conviction records while a person was a "child," relying on the Family Code's definition of "child." Changing the term "child" would likely shift the coverage of this expunction provision. Similarly, if the term "minor" were unified across statutes to mean "a person under 18" (the more frequently used definition across codes), the change would have substantive policy implications for the Alcoholic Beverage Code's legal drinking age.

Despite legislative reforms passed in 2013 and 2015 designed to reduce the volume of Class C charges brought against juveniles in the adult criminal court system, over 53,000 non-traffic Class C cases were filed against juveniles in justice and municipal courts in FY17. Considering these numbers and the

long-term impact a Class C conviction can have on a youth's future, questions about the justness of the current system will likely linger. Two potential options to the current system warrant consideration: shifting adjudication of non-traffic Class C charges against juveniles into a civil system for resolution (akin to the civil truancy court method), and expanding the use of the juvenile case manager (JCM) in municipal and justice of the peace courts. Both of these options could disrupt further penetration into the system for youth who become justice-involved, consistent with 2013 and 2015 juvenile justice reforms.

Appendix A

Alcoholic Beverage Code

“Child”

Section	Heading	Definition
106.041	Driving or Operating Watercraft Under the Influence of Alcohol by Minor	(j) In this section: (1) “Child has the meaning assigned by Section 51.02, Family Code.
106.071	Punishment for Alcohol-Related Offense by Minor	(g) In this section, “child” has the meaning assigned by Section 51.02, Family Code.

“Minor”

Section	Heading	Definition
106.01	Definition	In this code, “minor” means a person under 21 years of age.

Education Code

“Child”

Section	Heading	Definition
25.085	Compulsory School Attendance	(b) Unless specifically exempted by Section 25.086, a child who is at least six years of age, or who is younger than six years of age and has previously been enrolled in first grade, and who has not yet reached the child's 19th birthday shall attend school.
33.051	Definitions	In this subchapter: (1) “Child” and “minor” have the meanings assigned by Section 101.003, Family Code.
37.141	Definitions	In this subchapter: (1) “Child” means a person who is: (A) a student; and (B) at least 10 years of age and younger than 18 years of age.

“Minor”

Section	Heading	Definition
33.051	Definitions	In this subchapter: (1) “Child” and “minor” have the meanings assigned by Section 101.003, Family Code.

Family Code Title 3 (Juvenile Justice Code)

“Child”

Section	Heading	Definition
51.02	Definitions	<p>In this title:</p> <p>(2) “Child” means a person who is:</p> <p>(A) ten years of age or older and under 17 years of age; or</p> <p>(B) seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.</p>
51.03	Delinquent Conduct; Conduct Indicating a Need for Supervision	<p>(e) For the purposes of Subsection (b)(2), “child” does not include a person who is married, divorced, or widowed.</p>
54.05	Hearing to Modify Disposition	<p>(a) Except as provided by Subsection (a-1), any disposition, except a commitment to the Texas Juvenile Justice Department, may be modified by the juvenile court as provided in this section until:</p> <p>(1) the child reaches:</p> <p>(A) the child's 18th birthday; or</p> <p>(B) the child's 19th birthday, if the child was placed on determinate sentence probation under Section 54.04(q); or</p> <p>(2) the child is earlier discharged by the court or operation of law.</p>

“Juvenile”

Section	Heading	Definition
60.010	Interstate Compact for Juveniles Article II – Definitions	<p>As used in this compact, unless the context clearly requires a different construction:</p> <p>(H) “Juvenile” means any person defined as a juvenile in any member state or by the rules of the Interstate Commission, including:</p> <p>(1) Accused Delinquent – a person charged with an offense that, if committed by an adult, would be a criminal offense;</p> <p>(2) Adjudicated Delinquent – a person found to have committed an offense that, if committed by an adult, would be a criminal offense;</p> <p>(3) Accused Status Offender – a person charged with an offense that would not be a criminal offense if committed by an adult;</p> <p>(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</p> <p>(5) Nonoffender – a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.</p>

Family Code (Non-Title 3 Provisions)

“Child”

Section	Heading	Definition
65.002	Definitions	<p>In this chapter:</p> <p>(1) “Child” means a person who is 12 years of age or older and younger than 19 years of age.</p>
101.003	Child or Minor; Adult	<p>(a) “Child” or “minor” means a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.</p> <p>(b) In the context of child support, “child” includes a person over 18 years of age for whom a person may be obligated to pay child support</p>
264.302	Early Youth Intervention Services	<p>(a) This section applies to a child who:</p> <p>(1) is seven years of age or older and under 17 years of age; and</p> <p>(2) has not had the disabilities of minority for general purposes removed under Chapter 31.</p>

“Minor”

Section	Heading	Definition
101.003	Child or Minor; Adult	<p>(a) “Child” or “minor” means a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.</p>

Government Code

“Minor”

Section	Heading	Definition
531.251	Texas System of Care Framework	(a) In this section: (1) “Minor” means an individual younger than 18 years of age.

Health and Safety Code

“Child”

Section	Heading	Definition
481.122	Offense: Delivery of Controlled Substance or Marihuana to Child	(d) In this section, “child” means a person younger than 18 years of age.

“Minor”

Section	Heading	Definition
462.022	Voluntary Admission of Minor	(d) In this section, “minor” means an individual younger than 18 years of age for whom the disabilities of minority have not been removed.
481.134	Drug-Free Zones	(a) In this section: (1) “Minor” means a person who is younger than 18 years of age.
591.003	Definitions	In this subtitle: (15) “Minor” means a person younger than 18 years of age who: (A) is not and has not been married; or (B) has not had the person's disabilities of minority removed for general purposes.

Human Resources Code

“Child”

Section	Heading	Definition
42.002	Voluntary Admission of Minor	In this chapter: (1) “Child” means a person under 18 years of age.
201.001	Drug-Free Zones	In this title: (2) “Child” means an individual: (A) 10 years of age or older and younger than 18 years of age who is under the jurisdiction of a juvenile court; or (B) 10 years of age or older and younger than 19 years of age who is committed to the department under Title 3, Family Code.
244.008	Definitions	(a) In this section, “child” means the child of a person who is committed to the department.

“Juvenile”

Section	Heading	Definition
63.001	Definitions	In this chapter: (1) “Juvenile” means a person from the age of 10 to 18 years who has been found to have engaged in delinquent conduct by a court of competent jurisdiction.

Penal Code

“Child”

Section	Heading	Definition
8.08	Child with Mental Illness, Disability, or Lack of Capacity	(d) In this section, “child” has the meaning assigned by Article 45.058(h), Code of Criminal Procedure.
22.011	Sexual Assault	(c) In this section: (1) "Child" means a person younger than 17 years of age.

Transportation Code

“Child”

Section	Heading	Definition
724.001	Definitions	In this chapter: (2) “Arrest” includes the taking into custody of a child, as defined by Section 51.02, Family Code.

“Minor”

Section	Heading	Definition
524.001	Definitions	In this chapter: (11) “Minor” means an individual under 21 years of age.

Code of Criminal Procedure

“Child”

Article	Heading	Definition
38.074	Testimony of child in prosecution of offense	<p>Sec. 1. In this article:</p> <p>(1) “Child” has the meaning assigned by Section 22.011(c), Penal Code.</p>
45.0216	Expunction of Certain Conviction Records	<p>(a) In this article, “child” has the meaning assigned by Section 51.02, Family Code.</p>
45.058	Children Taken Into Custody	<p>(h) In this article, “child” means a person who is:</p> <p>(1) at least 10 years of age and younger than 17 years of age; and</p> <p>(2) charged with or convicted of an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.14.</p>
56.32	Definitions	<p>(a) In this subchapter:</p> <p>(1) “Child” means an individual younger than 18 years of age who:</p> <p>(A) is not married; or</p> <p>(B) has not had the disabilities of minority removed for general purposes under Chapter 31, Family Code.</p>