

CIVIL VS. CRIMINAL LIABILITY FOR SCHOOL DISTRICT EMPLOYEES

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CIVIL VS. CRIMINAL LIABILITY FOR SCHOOL DISTRICT EMPLOYEES

I. The Basic Distinctions Between Civil and Criminal Cases

Civil cases usually involve private disputes between persons or organizations. Criminal cases involve an action by the state against a criminal defendant for an act that is considered to be harmful to society as well as the victim.

A. Civil Cases

A civil case begins when a person or entity (such as a corporation or the government), called the plaintiff, claims that another person or entity (the defendant) has failed to carry out a legal duty owed to the plaintiff. Both the plaintiff and the defendant are also referred to as “parties” or “litigants.” The plaintiff may ask the court to tell the defendant to fulfill the duty, or make compensation for the harm done, or both. Legal duties include respecting rights established under the Constitution or under federal or state law.

Civil suits are brought in both state and federal courts. An example of a civil case in a state court would be if a citizen sued a school district employee for excessive corporal punishment.

Individuals, corporations, and the federal government can also bring civil suits in federal court claiming violations of federal statutes or constitutional rights. For example, the federal government can sue a school district over segregation issues.

B. Criminal Cases

A person accused of a crime is generally charged in a formal accusation called an indictment (for felonies or serious crimes) or information (for misdemeanors). The government, on behalf of the people of the State of Texas or the United States, prosecutes the case through the District Attorneys Office for a state offense or United States Attorney’s Office if the person is charged with a federal crime.

It is not the victim’s responsibility to bring a criminal case. Although they can file an affidavit of non-prosecution and ask the state not to prosecute, but it is still up to the government to take the ultimate decision on whether to prosecute or not.

In some criminal cases, there may not be a specific victim. For example, state governments arrest and prosecute people accused of violating laws against driving while intoxicated because society regards that as a serious offense that can result in harm to others.

When a court determines that an individual committed a crime, that person will receive a sentence. The sentence may be an order to pay a monetary penalty (a fine and/or restitution to the victim), imprisonment, or supervision in the community (by a court employee called a U.S. probation officer if a federal crime), or some combination of these three things.

II. Civil Actions Can Compensate Victims When Criminal Action Does Not

Both restitution and compensation often do not cover a victim's full economic losses, and neither source pays anything for hard-to-quantify damages such as pain and suffering. A civil lawsuit may provide more complete compensation to a victim.

A. Why Victim's File a Civil Lawsuit?

Some of the benefits of civil actions may include:

1. Control of the Case

Victims have greater control in a civil suit than in a criminal case because they are a party to the civil case, cannot be excluded from the courtroom, and have final approval of settlement proposals.

2. Compensation

Civil actions can provide greater compensation for victims for the monetary damages they suffered, such as medical expenses and lost income. Civil actions can also compensate victims for the emotional damage they have suffered.

3. Justice and Accountability

Civil suits can hold offenders directly accountable to victims. These suits give victims their "day in court," regardless of whether there was a criminal conviction or any prosecution at all.

III. Civil Versus Criminal Justice

A significant difference between the criminal and civil court systems is that in a civil case, the victim controls essential decisions shaping the case. It is the victim who decides whether to sue, accept a settlement offer, or go to trial.

A. The Criminal Justice System

The criminal justice process begins after a crime has been committed and reported to law enforcement. If an arrest has been made and charges have been filed, the offender may be prosecuted. In a criminal prosecution, the crime is considered "a crime against the state." The victim's role is primarily defined as a witness for the prosecution. Although the prosecuting attorney may be very helpful to the victim and the victim's family, the prosecutor still represents the interests of the state, not the victim. In the criminal justice process judges the guilt or innocence of accused offenders, and when offenders are found guilty, attempts to punish or rehabilitate them.

B. The Civil Justice System

The civil justice system does not attempt to determine the innocence or guilt of an offender. Offenders are also not put in prison. Rather, civil courts attempt to determine whether an offender or a third party is liable for the injuries sustained as a result of the crime. A civil court's finding of liability usually means that the defendant must pay the victim, or the victim's family, monetary damages. The civil justice system can provide victims with monetary resources necessary to rebuild their lives. Furthermore, the civil justice system often provides victims and their families with a sense of justice that criminal courts fail to provide. Rather than holding defendants accountable for their "crimes against the state," the civil justice system holds defendants who are found liable directly accountable to their victims.

1. Burden of Proof

In the civil justice system, liability must be proven by a preponderance of the evidence, which simply means that one side's evidence is more persuasive than the other's. In other words, the plaintiff must prove there is a fifty-one percent or greater chance that the defendant committed all the elements of the particular wrong. This standard is far lower than the "proof beyond a reasonable doubt" required for a conviction in the criminal justice system. Therefore, it is sometimes possible to find the defendant liable in a civil case even though a verdict of "not guilty" was rendered in the criminal case. (A civil case can also be successful even if the offender was never prosecuted.) A good example of this principle is the O.J. Simpson case. Simpson was prosecuted for the murder of his former wife, Nicole Brown, and her friend, Ron Goldman. In 1995, the jury in the criminal case found Simpson "not guilty" of the murders. Despite Simpson's acquittal, the families of Nicole Brown and Ron Goldman filed a civil wrongful death lawsuit against Simpson. A trial was held in 1997 and Simpson was found liable for the deaths of Brown and Goldman. The jury in the civil case awarded the victims' families \$33.5 million in damages. While a criminal conviction may increase the chances of a perpetrator being held civilly liable, it is not a requirement for bringing a civil action.

IV. Parties in a Civil Suit

A. Plaintiffs

The main parties in a civil suit are called plaintiffs and defendants. Plaintiffs are the individuals who file the suit. They control the action, are entitled to all information relating to the case, and make decisions, such as settlement. The plaintiff in a civil suit can be the victim, survivors of the victim, or persons responsible for the victim.

B. Family Members

Family members who might bring a civil suit include the parents, spouse, children, or siblings of the victim.

C. Defendants

The defendants are the parties against whom civil actions are brought. The defendants in a civil suit can be the perpetrators, individuals who have assisted the perpetrators, or individuals or organizations whose commission of the crime (third parties).

V. Statutes of Limitations

There are time limits set by law for filing civil suits. These statutes of limitations vary from state to state. Any suit filed after the expiration of the statute of limitations is “time-barred” and cannot proceed. There are certain circumstances, such as those involving child victims and victims with repressed memories, where the time in which victims can file suit can be extended.

CRIMINAL CASES

In a CRIMINAL case...

...the goal is to hold the defendant accountable to the State.

...the State prosecutes and controls the case.

...the victim is only a witness. Although the victim may have rights to participate in the criminal justice process, the victim does not have the right to direct the prosecution of the case or to veto the prosecutor’s decisions.

...the State must prove that the perpetrator is guilty “beyond a reasonable doubt.”

...the perpetrator is presumed innocent until proven guilty.

...if a perpetrator is found guilty in a criminal court, the perpetrator is subject to punishment, such as probation or jail, and is held accountable to the State. The victim will not obtain money unless the court orders the defendant to

CIVIL LAWSUITS

In a CIVIL lawsuit...

...the goal is to hold the defendant accountable to the victim.

...the victim initiates and controls the case.

...the victim is a party, and as such, is entitled to all important information relating to the case, and can make decisions about the direction of the case, such as settlement of the claim.

...the victim must prove that it is more likely than not that the perpetrator is liable.

...the civil system makes no such presumption. The victim and the perpetrator appear as equals.

...if the perpetrator is found liable in a civil court, the perpetrator owes an obligation to the victim, such as money to compensate the victim for medical and therapy expenses, psychological damage, damage to family relationships, and lost

pay restitution for the victim's out-of-pocket expenses. The court cannot order restitution for non-economic damages.

wages. A civil court can order the perpetrator to pay for non-economic damages, such as pain and suffering, and can also order punitive damages.

...if the perpetrator is found not guilty, the State cannot initiate a second prosecution.

...the victim can sue the perpetrator in a civil court regardless of whether the perpetrator has been found guilty in a criminal prosecution.

VI. Specific Cases Where Civil and Criminal Actions Can be Brought

A. Excessive Corporal Punishment

Criminal charges can be brought against district employees for assault, child abuse, criminally negligent homicide and a host of other potential criminal actions depending on the specific facts and circumstances. Criminal and civil actions may be brought and pursued simultaneously against the employee.

1. Applicable Federal Law

In *Moore v. Willis Indep. School District*, 233 F.3d 871 (5th Cir. 2000), the Fifth Circuit addressed a case of alleged excessive corporal punishment. The Fifth Circuit noted the following facts as taken in the light most favorable to Plaintiff:

In February 1997, fourteen-year-old Aaron Moore was an eighth-grade student at Lynn Lucas Middle School in the Willis (Texas) Independent School District. Aaron was a student athlete who had just finished the season playing on the school's basketball team and was looking forward to trying out for the track team. He and approximately eighty other boys were enrolled in an elective gym class of which Allen Beene was one of the teachers. On the day in question, Beene observed Aaron talking to a classmate during roll call, a violation of a class rule. As punishment, Beene told Aaron to do 100 "ups and downs," also known as squat-thrusts. Aaron had not been subjected to similar punishment before, but he understood that if he stopped during this punishment, he either would be made to start over or would be sent to the principal's office. A classmate counted the 100 repetitions. Aaron then participated in approximately twenty to twenty-five minutes of weight lifting required of the gym class that day. He did not complain to Beene of pain or fatigue, fearing that would make matters worse. In the following days, however, Aaron was diagnosed with rhabdomyolysis and renal failure; he also developed esophagitis/gastritis. Aaron was hospitalized and missed three weeks of school. He continues to experience fatigue, and has been unable to participate in school sports or physical education class.

Moore, 233 F.3d at 873.

In analyzing the claims brought pursuant to the United States Constitution, the Court noted as follows:

[I]nflicting pain on a student through, inter alia, unreasonably excessive exercise, violates that student's constitutional right to bodily integrity by posing a risk of significant injury. This right is not implicated, however, when, as in this case, the conduct complained of is corporal punishment--even unreasonably excessive corporal punishment--intended as a disciplinary measure. "Our precedents dictate that injuries sustained incidentally to corporal punishment, irrespective of the severity of those injuries or the sensitivity of the student, do not implicate the due process clause if the forum state affords adequate post-punishment civil or criminal remedies for the student to vindicate legal transgressions." If the Moores have an adequate remedy under Texas law for Aaron's alleged mistreatment, they cannot state a constitutional claim and their federal claims must be dismissed.

Moore, 233 F.3d at 875.

The Court then went on to analyze Texas law and concluded that there were adequate post-punishment civil or criminal remedies for the student to vindicate legal transgressions. *Id.* at 876. Hence, the Fifth Circuit held that the Federal claims should be dismissed with prejudice and that the state court claims should be dismissed without prejudice. *Id.* at 876.

2. Applicable State Law

Several provisions of the Texas Education Code apply to individual defendants that are classified as "professional employees."

a. Immunity from Liability

At the time that the incident took place in the instant case, Section 22.0511 of the Texas Education Code read, in pertinent part, as follows:

§ 22.0511. Immunity From Liability

(a) A **professional employee**¹ of a school district is not personally liable for

¹ § 22.051. Definition; Other Immunity

(a) In this subchapter, "professional employee of a school district" includes:

(1) a superintendent, principal, teacher, including a substitute teacher, supervisor, social worker, counselor, nurse, and teacher's aide employed by a school district;

any act that is incident to or within the scope of the duties of the employee's position of employment and that involves the exercise of judgment or discretion on the part of the employee, except in circumstances in which a **professional employee** uses excessive force in the discipline of students or negligence resulting in bodily injury to students.

(b) This section does not apply to the operation, use, or maintenance of any motor vehicle.

(c) In addition to the immunity provided under this section and under other provisions of state law, an individual is entitled to any immunity and any other protections afforded under the Paul D. Coverdell Teacher Protection Act of 2001 (20 U.S.C. Section 6731 et seq.), as amended. Nothing in this subsection shall be construed to limit or abridge any immunity or protection afforded an individual under state law. For purposes of this subsection, "individual" includes a person who provides services to private schools, to the extent provided by federal law.

As set forth above in the statute, statutory immunity requires that the individual defendant be a: 1) professional employee of a school district; 2) acting within the scope of his or her duties; 3) which involve the exercise of judgment; and 4) are not within the stated exceptions. *Williams v. Chatman*, 17 S.W.3d 694 (Tex. App. – Amarillo 1999, writ denied). The stated exceptions in Section 22.051 et seq, only create liability for excessive force or negligence involving discipline that results in bodily injury to a student. *Diggs v. Bales*, 667 S.W.2d 916 (Tex. App. – Dallas 1984, writ ref'd n.r.e.); *Spacek v. Charles*, 928 S.W.2d 88 (Tex. App. – Houston [14th Dist.]1996, writ dismissed W.O.J.).

There is no waiver of immunity under state law for the school district.

3. Plaintiff Must Provide a Notice of Claim and Exhaust Administrative Remedies

Plaintiff must first exhaust his or her administrative remedies prior to filing suit.

(2) a teacher employed by a company that contracts with a school district to provide the teacher's services to the district;

(3) a student in an education preparation program participating in a field experience or internship;

(4) a school bus driver certified in accordance with standards and qualifications adopted by the Department of Public Safety of the State of Texas;

(5) a member of the board of trustees of an independent school district; and

(6) any other person employed by a school district whose employment requires certification and the exercise of discretion.

(b) The statutory immunity provided by this subchapter is in addition to and does not preempt the common law doctrine of official and governmental immunity.

Grimes v. Stringer, 957 S.W.2d 865 (Tex. App. – Tyler 1997, writ denied). In relation to the Notice of Claim, the Texas Education Code provides as follows:

§ 22.0513. Notice of Claim

(a) Not later than the 90th day before the date a person files a suit against a **professional employee** of a school district, the person must give written notice to the employee of the claim, reasonably describing the incident from which the claim arose.

(b) A **professional employee** of a school district against whom a suit is pending who does not receive written notice, as required by Subsection (a), may file a plea in abatement not later than the 30th day after the date the person files an original answer in the court in which the suit is pending.

(c) The court shall abate the suit if the court, after a hearing, finds that the person is entitled to an abatement because notice was not provided as required by this section.

(d) An abatement under Subsection (c) continues until the 90th day after the date that written notice is given to the **professional employee** of a school district as provided by Subsection (a).

Section 22.0514 of the Texas Education Code specifically requires that all remedies at the District level be exhausted prior to filing suit. Specifically, the Education Code provides as follows:

§ 22.0514. Exhaustion of Remedies

A person may not file suit against a professional employee of a school district unless the person has exhausted the remedies provided by the school district for resolving the complaint.

The plaintiffs must exhaust their administrative remedies.

4. No Duty to Intervene

Texas law does not impose a duty to intervene in alleged excessive corporal punishment situations, which would exclude claims against any District employee other than Coach Knight. *Fee v. Hernandez*, 900 F.2d 804 (5th Cir. 1990), *cert. denied* 498 U.S. 908 (1990).

B. Sexual Contact/Sexual Assault

There is plenty of liability to go around for administrators or teachers who sexually assault or have sexual contact with a student.

1. Criminal Liability under State Statutes

a. Improper Relationship Between Educator and Student

An employee of a public or private primary or secondary school commits this offense if the employee engages in sexual contact, sexual intercourse or deviate sexual intercourse with a person who is enrolled in a public or private primary or secondary school at which the employee works. TEX. PEN. CODE §21.12(a). Sexual contact includes any touching of the anus, breast, or any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person. TEX. PEN. CODE §21.01(2). Sexual intercourse and deviate sexual intercourse are further defined by the statute. See TEX. PEN. CODE §21.01(1),(3).

b. Official Oppression

Texas state law makes it a crime for a public servant acting under color of his office to intentionally subject another to sexual harassment. TEX. PEN. CODE §39.03(a)(3).

1. Who Is a Public Servant?

A public servant is a person elected, selected, appointed, employed, or otherwise designated as an officer, employee, or agent of government, even if he has not yet qualified for office or assumed his duties. TEX. PEN. CODE §1.07(a)(41)(A). The term, public servant, includes school officials, administrators, teachers, education assistants, and school secretaries. See, e.g., *Martinez v. State*, 2004 WL 202864; *In re J.L.O.*, 2002 WL 1804951.

2. When Does a Public Servant Act Under Color of His Office?

A public servant acts under color of his office when he acts or purports to act in an official capacity or takes advantage of such actual or purported capacity. TEX. PEN. CODE §39.03(b).

3. What is Sexual Harassment?

For the purposes of the official oppression statute, “sexual harassment” means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person’s exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly. TEX. PEN. CODE §39.04(c).

4. What is the Penalty for Official Oppression?

Official Oppression is a Class A Misdemeanor punishable by a fine not to exceed \$4000, up to one year incarceration, or both. In addition to these specific statutes dealing with educators and public servants, school administrators and teachers are also subject to

the criminal statutes that apply to everyone else. In some instances, the punishment is more severe because of the perpetrator's position of trust with regard to students.

c. Sexual Assault and Aggravated Sexual Assault

Generally, a person is liable for sexual assault if he intentionally or knowingly causes the penetration of another person or causes another person to penetrate the actor, without the other person's consent. TEX. PEN. CODE §22.011(a) (see this section for specific acts that constitute "penetration" and sexual assault). However, consent of the other person is irrelevant if the other person is a child. TEX. PEN. CODE §22.011(b). A child is a person younger than 17 years of age. TEX. PEN. CODE §22.011(c). An assault is "without the consent of the person," if the actor or perpetrator is a public servant who coerces the other person to submit or participate. TEX. PEN. CODE §22.011(b)(8). Sexual assault is a second degree felony, punishable by two to 20 years incarceration and a fine not to exceed \$10,000.

If the actor causes serious bodily injury OR if the victim is younger than 14 years of age, the offense is Aggravated Sexual Assault, a first degree felony, punishable by five to 99 years incarceration and a fine not to exceed \$10,000.

d. Indecency with a Child

Texas law makes it a crime to engage in sexual contact with a child or cause a child to engage in sexual contact. TEX. PEN. CODE §21.11(a)(1). "Sexual contact" means the following acts, if committed with the intent to arouse or gratify the sexual desire of any person: (1) any touching by a person, including touching through clothing, of the anus, breast, or any part of the genitals of a child; or (2) any touching of any part of the body of a child, including touching through clothing, with the anus, breast, or any part of the genitals of a person. TEX. PEN. CODE §21.11(c). Indecency by sexual contact is a second degree felony. TEX. PEN. CODE §21.11(d).

An actor also commits indecency with a child if, with the intent to arouse or gratify the sexual desire of any person, the actor exposes the actor's anus or any part of the actor's genitals, knowing the child is present or causes the child to so expose himself. TEX. PEN. CODE §21.11(a)(2). This form of indecency is a third degree felony, punishable by two to ten years' incarceration and a fine not to exceed \$10,000.

2. Criminal Liability under Federal Statutes

a. 18 U.S.C. §242

It is a crime for a public official to wilfully and under color of law to deprive a person of rights provided by the Constitution and laws of the United States. 18 U.S.C. §242; *United States v. Bradley*, 196 F.3d 762, 767 (7th Cir. 1999). At least one court has found a Constitutional violation where a public official used his office to coerce a minor to have sex with him. See *United States v. Giordano*, 324 F. Supp. 2d 349 (D. Conn. 2003) (public official forcing minor to have sex is a violation of the due process right to be free from

sexual assault).

However, even if such sexual contact is not a constitutional right, the federal statutes also make sexual assault a crime. See 18 U.S.C. §2241 (aggravated sexual abuse); 18 U.S.C. §2242 (sexual abuse); 18 U.S.C. §2243(a) (sexual abuse fo a minor).

3. Civil Liability under State Law

There is no specific state statute that imposes civil liability on an administrator for a sexual assault on a child. However, any assault by an administrator on a child is actionable under the common law tort of assault. In Texas, an assault is both an offense against the peace and dignity of the State, as well as an invasion of private rights. See *Foye v. Montes*, 9 S.W.3d 436, 441 (Tex. App.–Houston [1st Dist.] 1999, pet. denied). An assault occurs, whether in a civil or criminal context, when a person intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative. *Id.*

4. Civil Liability under Federal Statutes

Suits against school officials are most commonly brought under Section 1983. In order to prevail on a section 1983 claim, a plaintiff must demonstrate the deprivation of a right, privilege, or immunity protected by the Constitution and laws of the United States by a person acting under color of state law. 42 U.S.C. §1983. A section 1983 plaintiff must allege the deprivation of a federally protected right. *Williams v. Treen*, 671 F.2d 892, 900 (5th Cir. 1982). A teacher who persuades a student to have sex through his interaction with the student at school has deprived that student of the liberty interest in freedom from sexual abuse. See *Doe v. Rains Co. Indep. Sch. Dist.*, 66 F.3d 1402, 1406 (5th Cir. 1995) (high school teacher persuaded victim to have sex with him through his relationship with her at school and subsequent babysitting assignments).

C. Injuries by Motor Driven Equipment Driven by Impaired Employee

1. Civil Liability

a. For the District

A school district is a political subdivision of the State of Texas and is considered a governmental unit. TEX. CIV. PRAC. & REM. CODE ANN. § 101.001(3)(B); *San Antonio ISD v. McKinney*, 936 S.W.2d 279, 283 (Tex. 1996). As such, the district is usually protected from suit by the Texas Tort Claims Act. However, a governmental entity is liable for personal injury caused by the wrongful act of an employee if injuries arise from the use of a motor-driven vehicle or by the use of tangible personal property. TEX. CIV. PRAC. & REM. CODE ANN. §§ 101.021(1)(A), (2). Since the school bus is a motor driven vehicle, TISD can be sued by the two students injured while on the bus. TEX. CIV. PRAC. & REM. CODE ANN. § 101.051; *Mount Pleasant ISD v. Estate of Lindburg*, 766 S.W.2d 208, 211 (Tex. 1989)(holding that school districts are not immune from suit in cases involving the operation or use of a motor-driven vehicle).

Even if an Employee has only been conditionally hired while waiting for background checks and drug screening to be performed, if he or she is paid by the district and working under the direction of the district, the person is still considered an employee. TEX. CIV. PRAC. & REM. CODE ANN. § 101.001(2). The district may be able to assert as a defense that Billy was committing an intentional tort and therefore it is not liable for his criminal acts. Intentional torts include assault, battery, and false imprisonment, among others. TEX. CIV. PRAC. & REM. CODE ANN. § 101.057(2). An intentional tort differs from a negligent act because to commit an intentional tort the actor must intend the resulting injury of his act. *Durbin v. City of Winnsboro*, 135 S.W.3d 317, 324 (Tex. App.–Texarkana 2004, pet. denied); *Campos v. Nueces County*, 162 S.W.3d 778, 786 (Tex. App.–Corpus Christi 2005, n.p.h.).

Damages against a school district on these facts are capped at “only” \$100,000 for each person injured or \$300,000 for each single occurrence of bodily injury. TEX. CIV. PRAC. & REM. CODE ANN. § 101.023(b). Please note that if the plaintiffs were to allege that their civil rights were somehow violated by the bus driver that no cap on damages exists for that type of claim. A governmental entity is not responsible for punitive damages. TEX. CIV. PRAC. & REM. CODE ANN. § 101.024.

b. Supervisory Liability

Generally, trustees and agents of a school district, while acting in an official capacity, enjoy the same immunity from suit as does the district. *Bates v. Dallas ISD*, 952 S.W.2d 543, 551 (Tex. App.–Dallas 1997, writ denied). As long as the official acts within the scope of his employment, he cannot be held personally liable in a personal injury action. However, in cases involving separate and individual torts or when the official abandons his official duties, the supervisor can be held liable. *Id.*

A supervisor has an absolute, affirmative duty to obtain all criminal history on an employee before employment begins. TEX. EDUC. CODE ANN. § 22.084(a)(2). Under the Texas Education Code, had Billy been convicted of a felony or a misdemeanor crime of moral turpitude (like theft or theft by check), only the school district’s board of trustees can approve this bus driver for employment. *Id.* at § 22.084(b). If that duty is not met, the supervisor is not immune from suit. *Whitesell v. Newsome*, 138 S.W.3d 393, 397 (Tex. App.–Houston [14th Dist.] 2004, pet. denied).

c. Civil Liability for the Driver

From a civil standpoint, the driver will have no immunity from suit.

2. Criminal Liability for the Driver

The driver could be charged with at least two potential criminal violations. The driver could be charged with the following criminal offenses:

- (1) **Driving While Intoxicated With a Child Passenger:** The Texas Penal Code makes it a felony offense to operate a motor vehicle in a public place occupied by a passenger younger than 15 years old while intoxicated (this

includes alcohol, illegal drugs, or prescription drugs). Punishment upon conviction for this state jail felony is between 6 months and 2 years in jail and a fine up to \$10,000, TEX. PENAL CODE § 49.045; TEX. PENAL CODE § 12.35.; and/or

- (2) Injury to a Child: Billy was charged with two counts of injury to a child. A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or intentionally, knowingly, or recklessly by omission, causes bodily injury to a person 14 years of age or younger. TEX. PENAL CODE § 22.04(a).