

JUVENILE ALIEN PROJECT

STATE CONFERENCE

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JUVENILE ALIEN PROJECT

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I. ACKNOWLEDGEMENT

Acknowledgment

Research can only be as good as the information fed into the process and the cooperation from all of those who are involved in the project. The research on juvenile alien problems was greatly enhanced by the overwhelming cooperation of many agencies: county judges, local police department, county sheriffs, mayors, juvenile probation officers, U.S. Border Patrols, local merchants, Texas Department of Community Affairs legal staff, and the Criminal Justice Division. Personnel from all these agencies and organizations were helpful to the research team from the Office of Youth Opportunities who gathered the available data comprising the research package.

We wish to express thanks to the Steering Committee members who gave invaluable support and expertise to the research effort. The Committee was always more than willing to lend its support to the effort immediately upon request. Without this support the research would not have been possible.

Appreciation goes out to Sue Doty and Israel Cuellar who combined the collected data for the Office of Youth Opportunities.

Special thanks is given to the Criminal Justice Division for the cooperation received in the funding of this research package and the State Conference on Juvenile Aliens. Without such cooperation between state agencies, projects such as this would not be possible.

II. PROJECT BACKGROUND AND GOALS

II. Project Background and Goals

In June, 1974, the Texas Department of Community Affairs, Office of Youth Opportunities, received a request from the El Paso area for assistance in finding a solution to the problem of juvenile aliens crossing the U.S.-Mexican border, committing crimes in Texas, and returning to the Mexican side without prosecution.

The first step taken was to look into what is now being done in this area. There seemed to be two major problems related to the juvenile alien, one being that after apprehension the youth are returned to Mexico without being charged or prosecuted. This is a result of various factors, one of which is the restraint within the State General Appropriations Act prohibiting expenditure of public monies for training or treatment of any non-resident of the State of Texas. The second problem is the lack of statistical data on referrals, prosecutions, and records to indicate the exact volume of the problem along the entire border of Texas and in some other counties of the state.

In order to provide guidance from experts in this field, a steering committee was formed to help direct the project. The goals of the committee are: (1) to formulate all available arrest and disposition characteristics of cases involving alien youth along the fourteen border counties, Bexar County and Kleberg County into a summary report to be utilized by the Texas Criminal Justice Council and related agencies in future criminal justice plans; and (2) to put together a state conference with participants from city, county, state, and federal agencies concerned with the juvenile alien problem, for the express purpose of developing

II. Project Background and Goals

possibilities for reducing the problem.

Hopefully, the state conference will bring together people from the local, state, and federal levels who can and will influence the changes necessary to deal with the juvenile alien problems. It will be necessary to compile data that will show the magnitude of the problem and perhaps offer a viable solution to it. Each of the counties involved will be asked to participate in the data collection process and in the state conference.

III. HISTORY OF ALIEN FLOW ACROSS TEXAS-MEXICO BORDER

III. History of Alien Flow Across the Border

The history of the alien problem as it relates specifically to Texas begins with the signing of the Treaty of Guadalupe Hidalgo in 1848 in which the Texas/Mexico border was established. The 1800 mile border that the U.S. shares with Mexico gives rise to unique problems, all of which are clearly evident on the Texas/Mexico border. The significance of the border on the history of the Southwest, the alien problem, the economic life of the border communities transcends its geographical specifications.

"The border itself is something of a fiction. It becomes real when some national policy of either of the nations wants to assert the fact of its existence, but most often it is a permeable thing, a membrane that joins rather than separates the nationally distinct communities."⁽¹⁾

Entry into the U.S. across the U.S./Mexico border can be of various types, basically legal or illegal and of either temporary or permanent character. At the time of signing the Treaty of Guadalupe Hidalgo in 1848, it was estimated that less than 100,000 Mexican-Americans lived in all the part of the United States that was to become the Southwest. Up until 1900 fewer than 30,000 legal immigrants were recorded. The first big migration to cross the border was during the Mexican Revolution, 1911-1920. In addition to the push spurred on by the Mexican Revolution, agricultural labor shortages in the U.S. at the time due to WW I created a demand that helped pull Mexicans across the border. Demand for

(1) Fred H. Schmidt, "Spanish Surnamed Americans Employed in the Southwest" (Washington, D.C. Government Printing Office, 1970) p. 7.

III. History of Alien Flow Across
the Border

Mexican labor remained high even after the war as Mexicans were not covered by the quotas imposed by the National Origin Act of 1924. Generally, Mexican workers were welcomed in the United States until the depression of 1930 when they were often forcibly repatriated to Mexico.

The second major migration of Mexican aliens was brought about during WW II when the Mexican worker was again needed in the U.S. An agreement was reached between Mexico and the U.S. in 1942 which initiated the Bracero Program (Public Law 42). Texas was excluded from this agreement because of discriminatory practices that had been reported toward Mexican-Americans and Mexican laborers in Texas. At the time also, it was basically an emergency measure for the U.S. while Mexico was prospering economically. Although Public Law 42 formally ended in 1947, the Bracero Program continued informally until 1951. It was formally redrawn in 1951 (Public Law 75), this time including Texas. This public law was strongly supported by growers due to labor shortages induced by the Korean Conflict. The Bracero Program was terminated in 1964 by the Department of Labor.

Since the end of the Bracero Program the commuter has taken on more significance. In his definition of the commuter David S. North has said that "The commuter is this generation's bracero."⁽²⁾

⁽²⁾ David S. North, "The Border Crosser—People who Live in Mexico and Work in the United States" (Washington, D.C. Trans Century Corp., 1970) p. 135.

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the Border

Commuters are people who live in Mexico but work in the U.S.

Commuters are one of the forms of Mexican immigration. Commuters can be either alien or citizens. They can be either "green card holders" or "white card holders". Green card holders are entitled to work and live anywhere in the U.S. White card holders are legal visitors for 72 hours at a time, have to remain within a 150 mile radius of the border, and are not allowed to work.

Actual number of illegal entries are, of course, unobtainable; however, figures are available for those apprehended and deported back to Mexico by the Immigration and Naturalization Service of the Department of Justice. Illegal entry has been increasing at alarming rates. The Commissioner of I.N.S. before a congressional committee in 1971 made the following comments:

"The trend will be upward. The Mexican-U.S. border situation has grown progressively worse. The job market in Mexico is not keeping pace with the population increase, the second largest in the world. The higher wage in the United States is ever present and border violations continue to mount."⁽³⁾

The 1973 Annual Report of the Immigration and Naturalization Service shows that of the 655,968 deportable aliens located and returned that year, Mexican nationals exceeded those from all other countries combined. And of the 576,823 Mexicans who were returned, 84% made surreptitious entries, 99% of which were made over the Mexican border.

⁽³⁾ Michael Mallory, "Human Wave of Mexicans Splashes Across the Border," *The National Observer*, October 16, 1971, p. 1.

III. History of Alien Flow Across
the Border

A Comparison of annual number of Mexican braceros and
deported Mexican Nationals, 1948-1971

Year	Mexican braceros	Illegal entrants, deported to Mexico
1948	35,345	193,852
1949	107,000	289,400
1950	67,500	469,581
1951	192,000	510,355
1952	197,100	531,719
1953	201,380	839,149
1954	309,033	1,035,282
1955	398,650	165,186
1956	445,197	58,792
1957	436,049	45,640
1958	432,857	45,164
1959	437,643	42,732
1960	315,846	39,750
1961	291,420	39,860
1962	194,978	41,200
1963	186,865	51,230
1964	177,736	41,589
1965	20,286	48,948
1966	8,647	89,683
1967	7,703	107,695
1968	0	142,520
1969	0	189,572
1970	0	265,539
1971	0	348,000

SOURCE: U.S. Department of Labor and the Immigration and Naturalization Service of the U.S. Department of Justice

IV. ECONOMIC CONDITIONS IN MEXICO

IV. Economic Conditions in Mexico

It is well accepted that the major underlying reason for the migration from Mexico to the United States has to do with the relatively poor economic conditions in Mexico. While the Mexican economy has experienced a high rate of real growth, it has also been confronted with high unemployment and underemployment along with inordinately high birth rates. The birth rate for Mexico (1972) was 43.4 per 1,000 population as compared to the U.S. birth rate for the same year of 15.6 per 1,000 population. The Mexican population is also quite youthful with approximately 54.94% of the population being below 18 years of age (1970 Mexican Census data) as compared to 34.3% for the U.S. for the same year.

Within Mexico, the economic conditions in rural areas give rise to two major migration streams: a convergence on Mexico City and toward the border areas. The migration toward the border not only affects unemployment problems and the like on the Mexican border cities but also has its impact on the U.S. border cities as well. In 1969 the combined unemployment and underemployment average for major Texas border city areas was 34.9%.

The Bureau of Employment Security of the U.S. Department of Labor found that the rate of unemployment in 1966 in Texas border cities was almost 95 percent larger than in Texas interior cities.

Brief comparison of the economic conditions of Mexico and the State of Texas alone reveals that Texas exceeds Mexico in economic output, petroleum production, number of telephones, registered motor vehicles and cotton production.



V. *TRAFFIC PROBLEMS OF ALIEN FLOW ACROSS TEXAS-MEXICO BORDER*

V. *Traffic Problems of Alien Flow Across the U.S.-Mexico Border*

The issue of traffic flow across U.S./Mexican border is more complex than merely legal versus illegal entry. As demonstrated earlier, there exists a great disparity in economic conditions between Texas and Mexico. The possibility of a better paying job in the U.S. is an attractive lure for many Mexican citizens in border areas and in the interior as well. It is estimated that 50,000 commuters daily cross the border from Mexico for work in the United States. Additionally, almost one and one-half million Mexican citizens reside and work in the U.S. as legal non-immigrants. Still more Mexican workers are in the U.S. illegally. Almost half a million deportable aliens from Mexico were found and deported by the U.S. Immigration Service in 1973 and certainly many others remained, unapprehended.

Such a flood of workers creates a series of social and economic problems for border areas. Border towns on both sides are crowded and growing, with corresponding major stress being placed upon locally provided services such as health care, sanitation, and education. On the U.S. side, the existence of a flooded labor market means lower wages for all workers, but particularly for marginal or semi-skilled workers. Trade union organization is virtually impossible and competition for available jobs is high. With a large and ever-increasing poor population, the tax burden for support of services continues to fall upon the same number, but increasingly smaller percentage of the population. Yet as economic conditions still are more attractive north of the border,

V. Traffic Problems of Alien Flow
Across the U.S.-Mexico Border

the labor market continues to become more crowded.

For business and industry itself, however, labor conditions as described are in many ways desirable. Wages need not be as high as in northern industrial centers. Union organization, if present at all, has little power when a ready pool of replacement workers, needing money for survival, can be hired to cross virtually any picket line. Further, no harsh penalties exist should an employer hire an illegal alien. The employer merely loses an employee, who can quickly be replaced, while the alien is deported, to cross again by either legal or illegal means. For the Mexican worker, be he legally or illegally in the U.S., the benefits of higher wages and the use of tax-supported public services are attractive and attainable items, again with no major penalty save deportation should an illegal alien be found. For Mexico itself, a part of its labor force can be employed and a portion of the wages remitted in support of their families in Mexico, thus having an adverse impact on the U.S. balance of payments position.

The social consequences of such a situation are less attractive for all concerned. The migration to Mexican border towns produces a population of uprooted, culturally estranged people not unlike the masses of southern and Appalachia workers who migrated to northern U.S. industrial complexes in search of work in the middle of this century. Unemployment and underemployment are the condition of large segments of the population on either side of the border.

V. Traffic Problems of Alien Flow
Across the U.S.-Mexico Border

The cultural supports of agricultural and traditional society seem to disintegrate in high stress poverty environments. Juvenile delinquency is but one consequence of such an environment, particularly when coupled with a disproportionately high percentage of juveniles in the population of the area.

For a Mexican juvenile along the border, the attractions of the northern side also pose rewards with light punishment. All kinds of expressions of affluence are available, with only the threat of deportation in the way. Even actions that could place a youth in jeopardy with law enforcement officials in Mexico if committed in Mexico are dealt with simply by deportation when committed in the U.S. In addition, since simply being in the U.S. unaccompanied and under eighteen is illegal, there exists an added attraction for the sense of bravado common to adolescents. The risks, while present, are low compared to the possible rewards. Some means of entry utilized by crime-oriented juvenile aliens are:

- 1. crossing the river at low areas on foot or, in some cases, by boat;*
- 2. entry through storm drainage systems;*
- 3. entry by railroad cars; or*
- 4. entry through holes in the fence in areas where the fence is present.*

VI. TARGET GROUP - APPREHENDED JUVENILE ALIEN

VI. Target Group - Apprehended Juvenile Alien

The group of juvenile aliens we are presently concerned with are between the ages of 8 - 14, live in Mexico and cross the Texas/Mexico border in highly populated areas for the express purpose of conducting criminal activity. This activity may or may not be coordinated and/or controlled by persons remaining on the Mexican side of the border. Generally the offenses committed are burglary, robbery, or shoplifting.

These youths do not generally remain in the U.S. for long periods of time. Visits are short and for specific purposes.

In general, activities are not well-disguised. Apprehension within two hours of committing the offense is highly probable. This characteristic would possibly change, were prosecution possible.

It is estimated this person will cross the border on an average of 20-25 times per month and will return with something of value on 85 to 90% of his visits. The youth will average three to four contacts per month with enforcement agencies. The average contact will consist of apprehension immediately following the offense, the confiscation of stolen property, and finally being turned over to U.S. Immigration and Naturalization Service for return to Mexico. (In 75 to 85% of the cases, the enforcement officer, if local, will return the youth to the border without referral to U.S. Immigration and Naturalization Service.) Upon return to the border, the youth is free to initiate his next illegal entry and related criminal activities.

VI. Target Group - Apprehended
Juvenile Alien

The juvenile will generally conduct this type of activity until he is 16 to 18 years of age, at which time prosecution by U.S. officials as an adult is probable. At this point his visits to the U.S. will be of a less frequent nature and on generally a non-criminal basis.

It should be noted at some point in this estimated process the youth may acquire residency in the U.S. border city by having relatives or friends who are legal residents. Through these persons the youth may acquire a "guardian parent," who in turn may register the youth in the local school system. It is estimated that the percent ranges from 10 to 28% of the youth enrolled in U.S. school systems along the Texas/Mexican border gained admission as a result of the above procedure. In addition, many of these youths are present either directly or indirectly on federal and/or state welfare assistance rolls.

VII. JUVENILE ALIEN NUMBERS AND CHARACTERISTICS

VII. *Juvenile Alien Apprehension Numbers and Characteristics*

Juvenile offense figures along the U.S. border area are extremely difficult to determine because of confounding local, state, and federal approaches to the handling of such offenses.

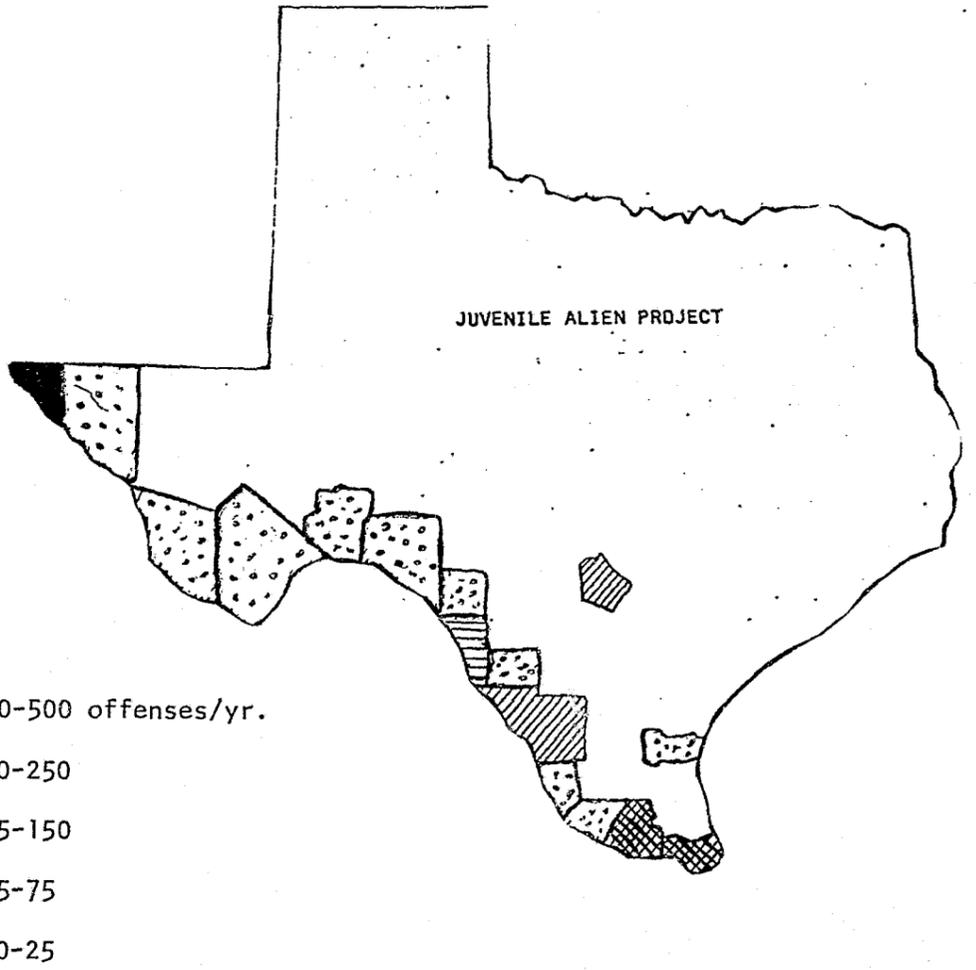
The problem has been one of long standing character in which each locality has developed its own approach(es) independently. It is further compounded by inadequate reporting procedures of such incidents. It has often been the practice to release individuals on the spot after confiscating stolen merchandise, etc., without recording any characteristics of the offender such as name, age, method of entry, or recording amount of stolen merchandise. Such procedures have usually developed out of knowledge that little if anything could be done with the individual if he were to be sent to juvenile authorities and because of existing laws relating to the handling of juveniles.

It is estimated that the figures reported in the following tables for 1974 are woefully under-representative of the actual number of incidents in such communities. The figures reported are for only those which were actually recorded by the cooperating sheriff, police, and probation departments for 1974.

The difficulty with which the following data were tabulated strongly impressed upon the researchers involved the need for improved recording procedures of such offenses. For example, in El Paso alone, the estimated number of juvenile aliens arrested ranged as high as 3,000 arrests per year according to official sources while only 353 were actually recorded.

1974 Unduplicated Juvenile Alien Offense Figures for Selected Texas Counties*

El Paso	353
Hudspeth	11
Presidio	0
Brewster	1
Terrell	1
Kinney	0
Val Verde	15
Maverick	57
Webb	96
Zapata	0
Starr	4
Hidalgo	196
Cameron	202
Kleberg	0
Bexar	109
TOTAL	1045



*Sources of figures are Sheriff, Police, and Juvenile Probation Departments

Breakdown of Charges for Juvenile Aliens in Selected Texas Counties for 1974

	Rape	Murder	Assault	Robbery	Burglary	Theft	IV**	Other*
El Paso			2		245	94	1	11
Hudspeth							11	
Presidio								
Brewster					1			
Terrell						1		
Kinney								
Val Verde						15		
Maverick					2	54		1
Webb			3		8	73		12
Zapata								
Starr						1		3
Hidalgo					19	99	60	19
Cameron					9	53	109	31
Kleberg								
Bexar	2	2			8	15	67	17
TOTALS	2	2	3		292	405	248	94

*other, includes drugs, public intoxication, possession of alcohol

**Illegal Entry classification often used to facilitate disposition when in fact other offenses have been committed such as theft, burglary, criminal trespass, drugs, etc.

Recorded Dispositions on Juvenile Aliens Charge in 1974
for Selected Texas Counties*

1. Released not charged	95
2. Released to USINS	823
3. Released to Probation Department	
4. Indicted - brought to trial	5
5. Convicted - sent to TYC	
6. Other, voluntary departure, released to parents, released at International Bridge, released to Mexican Consulate, etc.	<u>75</u>
TOTAL	998

**Disposition not reported by all counties surveyed*

VIII. SUMMARY OF PRESENT CASE DISPOSITIONS

VIII. Summary of Present Case Dispositions

When a: alien youth is apprehended by law enforcement officers, and suspected of, or charged with committing a criminal offense, the adjudication is blocked by conflicting state and federal laws and customs. Accordingly, we will try to follow this juvenile alien through the adjudication process for the purposes of indicating problems found by the respective persons or officials.

Prosecution for Violation of State Statutes

1. Local and State Enforcement Officer

- A. Is faced with a language barrier;
- B. Realizes prosecution is not probable, yet is required to expend manhours for more "handling;"
- C. Often releases the youth with a "warning" after confiscating supposed stolen property; or
- D. Turns less than 40% of the alien youth over to the United States Immigration and Naturalization Service for return to Mexico.

2. Detention Facility

- A. Is required to receive the youth, knowing prosecution is not probable;
- B. Does not have specific facilities for alien youth, as this person is often a very hard core offender, who should not be mixed with first offense youth who do not possess extensive criminal records;
- C. Does not have programs designed to reach the alien youth;
- D. Must expend considerable time in identifying the youth as an alien; or
- E. Must expend local funds for medical care, food and clothing while in custody.

VIII. Summary of Present Case
Disposition

3. Juvenile Court

- A. Cannot assign the youth to probation, as the youth is not a legal resident of Texas;
- B. Cannot leave the youth in local detention facilities or jails for long periods of time as a form of punishment;
- C. Cannot assign the youth to local diversion programs as he cannot maintain local residency in Texas;
- D. Must furnish legal counsel at court expense; or
- E. Can commit the youth to state correction facilities (TYC) but realize they must in turn merely turn the youth over to U.S.I.N. for return to Mexico.

4. State Juvenile Correction Facilities (Texas Youth Council)

Is required to accept the youth; however, is not allowed to expend state-appropriated monies for the training or medical treatment, except in emergencies, of any non-resident of the state (H. B. 139). Accordingly, upon receipt of the youth, the TYC can only contact the U.S.I.N.S. for return of the youth to Mexico border officials.

Prosecution for Violation of Federal Statutes

Prosecution for violation of federal statutes is blocked as a result of the following federal policies and statutes:

1. The offense must be aggravated and not just illegal entry.
2. The youth must be a multi-time offender and generally at least 15 years of age.
3. The U.S. Attorney must certify to the appropriate court that the juvenile or other state court either does not

VIII. Summary of Present Case
Disposition

have jurisdiction or refuses to assume the jurisdiction.

(Federal Law 18 USC5071 and 5032)

However, even in this case the problem of pre-trial detention remains. The juvenile must be detained in a juvenile facility or other suitable place designated by the Attorney General. Such facilities are lacking or less than adequate. Furthermore, what facilities do exist in Texas are state-supported, shifting the burden back to the state. Even after adjudication, a problem of facilities exists. The youth could be placed on probation, have the adjudication or disposition suspended or be committed to the custody of the Attorney General, which means incarceration in a federal Youth Corrections Center. In which case the U.S. Bureau of Prisons would have to:

1. Transport the youth to a state which has a federal youth facility; or
2. Contract with TYC facilities to house and furnish rehabilitative services to the youth.

However, shifting from a state legal solution still only deals with the end product of the process without considering the issue of prevention of the incidence of juvenile alien crime. It further shifts the site of prevention another step from the home community of the youth, which would seem to be in violation of at least the intent of Federal Law 18 USC 5035 and of recent federal court decisions concerning community-based corrections and the Texas Youth Council.

IX. LEGAL QUESTIONS AND ISSUES

IX. Legal Questions and Issues

This section will address the following legal questions and issues:

- 1. What jurisdiction does the State of Texas have over juvenile aliens?*
- 2. Does the appropriation bill rider's denial of funds to the Texas Youth Council for the treatment of juvenile aliens constitute a denial of equal protection under the United States Constitution?*
- 3. May the current juvenile alien problem be deemed an "emergency" under the exception to the appropriation bill rider?*
- 4. What role does the federal government play in apprehending juvenile aliens in Texas?*
- 5. Can the State of Texas enter into an agreement or compact with the Republic of Mexico regarding the apprehension of juveniles?*
- 6. Can the State of Texas enter into agreements with its neighboring states to control the flow of juvenile aliens from across the border?*

1.

What jurisdiction does the State of Texas have over juvenile aliens?

Title III of the recently-adopted Family Code, entitled "Delinquent Children and Children in Need of Supervision," addresses its sanctions to children in general; nowhere is mention made of citizenship requirements or alienage. As yet there is no case law interpreting this part of the Code, but authority as to prior law (Art. 2338-1, repealed) was that statutes relating to delinquent children should be liberally construed. Phillips v. State, 175 S.W.2d 790.

Also, the section entitled "Definitions" defines the word "child" as used in this title as "a person who is (A) ten 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." TEX. FAM. CODE § 51.02 (1975).

If an adult alien entered the state illegally and committed a crime here, there would be no question that he could be tried, convicted and punished under the laws of Texas. Juvenile aliens who enter the state and commit a crime should arguably be treated no differently. While the juvenile system in Texas emphasizes its civil, rather than criminal, nature, the fact remains that juvenile justice in America treads a thin line between civil and criminal. The landmark U.S. Supreme Court case of In re Gault, 387 U.S. 1 (1967) illustrates this; that case alone expanded due process for juveniles to include notice of charges, right to

counsel, privilege against self-incrimination, and the right to confrontation. Because of the nature of the Texas juvenile justice system, then, there is no reason why youthful offenders who are not citizens should not be tried and treated the same as every other class of person (adult citizen, adult alien, juvenile citizen) is.

Alternatively, a juvenile court may waive its exclusive original jurisdiction and transfer a child to the appropriate district court or criminal district court for criminal proceedings if the child is alleged to have committed a felony, was 15 years of age or older at the time of the alleged crime, no adjudication hearing has been conducted concerning the offense, and after a full investigation and hearing the juvenile court determines that because of the seriousness of the offense or the background of the child, the welfare of the community requires criminal proceedings. TEX. FAM. CODE ANN. § 54.02 (1975). Conceivably this waiver procedure would be utilized, in proper cases, for juvenile aliens. It is likely that most of the crimes committed by these aliens are of the grade of felony, such as robbery, burglary, and extortion. It is also likely that many of the offenders are between the ages of 15 and 17. To be certified as an adult, the juvenile must first appear before the juvenile court, but this does not seem to be a problem in the case of aliens. If juvenile courts, judges and juvenile boards receive funds from any source other than the Department of Health, the Department of Mental Health

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and Mental Retardation, or the Texas Youth Council, they are able to dispose of a juvenile alien who is before them.

It should be noted that the concept of double jeopardy has been incorporated into the Penal Code: "No person who has been adjudged a delinquent child may be convicted of any offense alleged in the petition to adjudge him a delinquent child or any offense within the knowledge of the juvenile judge as evidenced by anything in the record of the juvenile proceeding." TEX. PENAL CODE ANN. § 8.07 (1974). Therefore care must be taken in drawing up the original petition, since the appropriations rider precludes treatment of the alien as a juvenile; once the petition is drawn jeopardy attaches and the child may never be prosecuted as an adult for those crimes.

2.

Does the appropriation bill rider's denial of funds to the Texas Youth Council for the treatment of juvenile aliens constitute a denial of equal protection under the U.S. Constitution?

The basic conception of the former law (Art. 2328-1, repealed) was not one of punishment, but rather one of custodial protection of the child for its own good, and incidentally for the protection of society. *In re Dendy*, 1975 S.W.2d 297 (Tex. Civ. App.---Amarillo 1943) no writ history. This policy has been carried forward in the wording of § 51.01 of the Family Code, which states as the first purpose of this title "to provide for the care, the protection, and the wholesome moral, mental

IX. Legal Questions and Issues

and physical development of children coming within its provisions." Only secondary to this is protection of the community's welfare. It is clear then that the theory behind the confinement of juvenile delinquents is still treatment and care, a benefit which should arguably accrue to aliens as well as citizens.

It has been long held that the 14th amendment applied equally to all persons without regard to nationality. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886). Two caveats should be noted here, however. First, all cases giving constitutional protections to aliens have only spoken in terms of legal aliens; no mention has been made of the rights of persons in the United States in contravention of its laws. Second, depending on the nature of the state's interest, some legislation discriminatory to legal aliens has been upheld by the Supreme Court. Nevertheless, an argument could conceivably be made that withholding the benefits intended for all delinquent juveniles by the terms of this title is a denial by the state of equal protection of the laws.

3.

May the current juvenile alien problem be deemed an "emergency" under the exception to the appropriation bill rider?

The rider in questions reads, "None of the monies appropriated ... may be expended for the training or medical treatment except in emergencies of any student or patient who is not a citizen or resident of this state." Obviously if the juvenile alien

IX. Legal Questions and Issues

situation were acknowledged to be the kind of emergency contemplated in this language, the Texas Youth Council could resume treatment of these juveniles.

There is not much authority as to what the word "emergency" means in this sense (and not in the tort-negligence sense). In one case, Booth v. Board of Education of the Fort Worth Independent School District, 70 S.W.2d 350 (Tex. Civ. App.---Ft. Worth 1934, no writ), the question was whether parents could compel the school board to allow attendance of their unvaccinated children. The court said "An emergency is defined as an unforeseen occurrence which calls for immediate action, a pressing necessity," but said the idea was ridiculous that the board would be powerless to protect children merely because it had foreseen a danger." Another case said emergencies were "situations which have suddenly arisen, are temporary in character and urgent in immediate demand." Southwestern Greyhound Lines v. Railroad Commission, 147 S.W.2d 318 (Tex. Civ. App.---Austin 1940, writ granted).

Both definitions seem to fit juvenile alien crime in Texas. Crimes committed by these youths are certainly sudden and unforeseen, and even if officials expected it because of the past occurrences, that should make it no less an emergency. The problem is certainly "urgent in immediate demand." The best approach would be an Attorney General's Opinion Request with accompanying brief detailing the current situation in border cities.

IX. Legal Questions and Issues

4.

What role does the federal government play in apprehending juvenile aliens in Texas?

Federal law relating to juveniles, amended last year, defines a juvenile as a person who has not attained his 18th birthday, and juvenile delinquency as the violation of a law of the United States which would have been a crime if committed by an adult. 18 USC § 1325 (1970).

Federal law also provides that a juvenile is not to be proceeded against in a U.S. court unless the Attorney General after investigation certifies to an appropriate district court that the juvenile or other state court does not have jurisdiction or refuses to assume jurisdiction. 18 USC § 5032 (1974). In the case of a prosecution under § 1325, the U.S. Attorney for the district in which the alien was apprehended would certify to the U.S. District Court that the state court had no jurisdiction to prosecute a federal crime. Thereafter, the juvenile would be proceeded against in that district court, upon information, as a juvenile.

A problem arises when the juvenile is being detained pending trial. A juvenile may be detained only in a juvenile facility or other suitable place the Attorney General may designate. Whenever possible, the detention shall be in a foster home or community-based facility located in or near his home community. 18 USC § 5035 (1974). This shifts the problem of detention back

to the state, where it arose in the first place. There are two possible solutions here. First, the statute says "whenever possible," in this case; it would have to be up to the federal government to place the juvenile. Second, the juvenile could be confined in Texas Youth Council facilities if LEAA or other federal funds could be supplied by the federal government.

Once the juvenile is adjudged delinquent, the court may suspend the adjudication of delinquency or the disposition of the delinquent, place him on probation, or commit him to the custody of the Attorney General. 18 USC § 5037. The latter would entail incarceration in a federal Youth Corrections Center operated by the Bureau of Prisons.

5.

Can the State of Texas enter into an agreement or compact with the Republic of Mexico regarding the apprehension of juveniles?

The U.S. Constitution provides that "No state shall enter into any Treaty, Alliance or Confederation." U.S. CONST. art. 1 § 1 cl. 1. This is because the states have surrendered their treaty-making power to the federal government, leaving them with no independent political existence in an international sense. This is the concept of "clipped sovereignty."

However, the Constitution further provides, "No State shall, without the consent of Congress...enter into any agreement or compact with another state, or with a foreign power." U.S. CONST. art 1 §10 cl. 3. While this language could be broadly read to

prohibit all dealings with foreign countries, it has apparently been held to forbid only those agreements or compacts which affect the supremacy of the United States. 81 C.J.C. States § 12 (1953). An example of this is McHenry v. Brady, 163 N.W. 540, where constitutional provisions were not violated by the action of a state in obtaining the consent of authorities of another nation to the construction of a drain for surface waters which otherwise would be allowed to flow across the national boundary. Another example are reciprocity statutes of some states which insure reciprocal inheritance rights for residents of the state and foreign nationals. It has been held that these statutes are not unconstitutional per se, so long as the state courts do not engage in analysis of the laws of a foreign nation. Gorun v. Fall, 287 F. Supp. 725 (Dist. Ct. Mont. 1968).

There is support, then, for the proposition that the State of Texas, or several of its cities, could enter into agreements with the Republic of Mexico or its cities pertaining to the juvenile situation. A similar law already exists now in Texas providing for mutual fire protection agreements between border cities. Section 1 of ART. 1070b reads: "Any Texas city bordering on the Republic of Mexico may enter into a mutual fire protection agreement with its corresponding border city in the Republic of Mexico." Similarly, Art. 6889-4 (repealed) provided that the governor was empowered to negotiate with the state of Mexico, subject to the approval of the appropriate authorities of the

federal government, mutual aid compacts for civil defense and disaster relief.

It has been held that even in the absence of treaties or acts of Congress on the subject, the extradition of a fugitive from justice cannot become the subject of negotiation between a state and a foreign government. *U.S. v. Rauscher*, 119 U.S. 407 (1887). But this would not seem to apply to the situation at hand, since the cases are speaking of fugitive criminals and, as mentioned earlier, the juvenile justice system is technically a civil one.

6.

Can the State of Texas enter into agreements with neighboring states to control the flow of juvenile aliens from across the border?

Art. 1 §10 cl. 3 of the U.S. Constitution, as above quoted, speaks also of interstate agreements. While it would seem to prohibit every interstate compact not approved by Congress, it has been construed to apply only to those agreements that might tend to alter the political power of the states affected and thus encroach on or interfere with the supremacy of the United States. 81 C.J.S. *States* §10 (1953). It can be argued that the type of interstate agreement contemplated here, i.e., one that pinpoints a localized problem and how to go about solving it, does not affect the sovereignty of the federal government.

But even assuming that Congressional consent must be given,

it is not such an impediment that would make interstate agreements unfeasible. The Constitution does not state when the consent of Congress is to be given, whether it precedes or follows the compact, or whether it should be express or may be implied. *Virginia v. Tennessee*, 148 U.S. §503 (1893). But there is authority that it is sufficient if Congress signifies consent by some positive act with relation to the agreement, or by the adoption or approval of proceedings taken under it. It need not be given by a formal act, but may be given by resolution. 81 C.J.S. *States*, §10 (1953). The easiest approach would be for Congressmen from the participating states to introduce a resolution on the subject.

X. COMMENTS ON POSSIBLE SOLUTIONS

X. Comments on Possible Solutions

In reviewing the problem posed by juvenile aliens who commit illegal acts while in the United States, it is essential to understand that this problem is but one side effect of the much larger problem involving differing social, political and economic characteristics of two bordering nations. Because the problem is intricately related to such factors as urban migration in Mexico as well as the economic difference between the two nations, it would appear imperative that long-range solutions, especially, should be of binational nature. Any or all attempts to improve the overarching economic and social characteristics of the border communities should be looked at in planning long range goals. It would also appear imperative that federal, state, and local authorities on both sides of the border should cooperate in (1) assisting in gathering and monitoring of relevant data related to incidence rates, and (2) assisting in the development of long-range binational approaches toward prevention, treatment, and rehabilitation. It should be clearly understood that there are no single solutions to such a wide-scope problem as this and only by attacking it at all levels through a comprehensive approach will any significant impact be made.

In the more immediate sphere of operation, there are several alternatives available which simply or in combination might remedy the situation.

X. Comments on Possible Solutions

It might be possible that closer and more extensive working relationships could be established between law enforcement people on both sides of the border whereby juveniles apprehended on the United States side could, as a regular procedure, be turned over to Mexican juvenile authorities at the border instead of merely released. Agreements of this sort apparently already exist between some border cities for some occasions. (Some juvenile aliens in El Paso were reported released to the Juarez detention home). Such an arrangement could be effective only if adequate facilities and probation services exist in the Mexican border cities for treatment of juvenile offenders. Consultation and assistance could be offered if mutual agreement indicates that facilities and resources are lacking. Also, closer cooperation between the federal governments of the United States and Mexico could result in shared payments for facilities and services, stronger control of border crossings and coordinated economic development.

Another possibility is that local governments or groups of local governments could develop local correction and detention facilities. On the surface this possibility is unrealistic if one employs a traditional definition of correction and detention facilities as large total institutions. However, other models for correctional facilities exist and some have demonstrated effectiveness in dealing with juvenile problems. Group homes, foster home placement with casework, work programs and activity

X. Comments on Possible Solutions

programs, along with other models, some yet to be developed, exist as possibilities. Considering that juvenile offenders in the border area share many cultural commonalities regardless of citizenship, it would be possible to treat alien and citizen offenders in the same program without the necessity of accounting for great cultural differences. Of course, the development of such facilities would add more to the local tax burden and therefore would meet with resistance. It may be possible, though, that costs in other areas, particularly in long-range areas such as the costs of dealing with adult criminals and the direct cost of crimes committed (juvenile offenders without treatment might commit more crimes and might also grow up to be adult criminals), could be shown to decrease with added emphasis on juvenile corrections. Also, particularly for initial development of such programs, the possibility of federal and private grant monies could be explored.

It might further be possible that such community-based facilities could be established in cooperation with the Texas Youth Council as it develops and implements its decentralization actions.

In regard to the General Appropriations Act, which prohibits the expending of monies appropriated to Mental Health and Mental Retardation and Texas Youth Council for the training or medical treatment, except in emergencies, of non-residents of Texas, there are two possibilities:

X. Comments on Possible Solutions

1. The rider could be removed by the State Legislature.
2. The utilization of the emergency clause of the rider.

The problem of application here is the definition of the word "emergency." Texas appellate court decisions seem to utilize the concepts of "unforeseen occurrence," "pressing necessity," and "urgent in immediate demand," as definitions of "emergency." It could be argued that the juvenile alien crime problem itself is an emergency situation as the commission of a crime is a sudden and unforeseen occurrence. If so, then state monies could be expended for treatment and training in accordance with the law.

Clearly, there is no one solution to a problem of the complexity of the juvenile alien problem. It is simultaneously an issue of international relations, poverty, urbanization, cultural disruption, juvenile delinquency, the juvenile justice system, corrections, education and funding, to name a few control issues. No single solution can be applied, and any solution or combination of solutions employed will impact on the other issues. Similarly, while immediate treatment resources are needed, their need will never diminish unless approaches aimed at primary prevention are also implemented.

XI. ATTACHMENTS

Honorable John Hill
Attorney General
State of Texas
Austin, Texas

RE: Whether the Texas Youth Council must accept juvenile aliens committed by a juvenile Court of the State pursuant to Sections 54.04(d) (2) and 54.04(e), Title Three, Family Code in view of House Bill 139, 63rd Legislature, pages 11-70, Section E prohibiting the expenditure by the Texas Youth Council of funds appropriated to it for the training of aliens.

Dear General Hill:

The Texas Youth Council has refused and is refusing to accept Mexican aliens between the ages of ten (10) and seventeen (17) lawfully committed by the Juvenile Courts of the State in view of House Bill 139, 63rd Legislature, pages 11-70, Section E. Said bill reads as follows:

"e. ADMISSION AND DEPORTATION OF NONRESIDENTS AND ALIENS. None of the moneys appropriated to the Department of Health, Department of Mental Health and Mental Retardation and the Texas Youth Council may be expended for the training or medical treatment except in emergencies of any student or patient who is not a citizen or resident of this state. For the purpose of this provision, affidavits from two reputable persons shall be deemed adequate evidence of citizenship or residency." (emphasis added)

The cost of deporting any nonresident or alien may be paid by any of the institutions covered by this Section from appropriated funds available to such institutions. It is further provided that expenditures from appropriate items designated "general operating expenses" and "other operating expenses" in this Article, for the purposes of deporting nonresident or alien patients or returning Texas patients or students from other states, shall be governed by the following additional rules and procedures:..."

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Attorney General
State of Texas
Austin, Texas

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Title Three, of the Family Code, effective September 1, 1973, contains the following pertinent sections regarding handling and commitment of juveniles to the Texas Youth Council.

Section 51.02(1)(A) and (b) reads as follows:

Sec. 51.02. Definitions

"In this title"

(1) 'Child' means a person who is:

(A) ten 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."

Section 51.03 (a)(1)(2) provides:

"Section 51.03. Delinquent Conduct; Conduct Indicating a Need for Supervision

(a) Delinquent conduct is conduct other than a traffic offense; that violates:

(1) a penal law of this state punishable by imprisonment or by confinement in jail; or

(2) a reasonable and lawful order of a juvenile court entered under Section 54.04 or 54.05 of this code; except that a violation of a reasonable and lawful order of a juvenile court entered pursuant to a determination that the child engaged in conduct indicating a need for supervision as defined in Section 51.03(b)(2) or 51.03(b)(3) of this code does not constitute delinquent conduct."

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State of Texas
Austin, Texas

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Section 54.04 (a)(c)(d) and (e) provide that:

"Section 54.04. Disposition Hearing

(a) The disposition hearing shall be separate, distinct, and subsequent to the adjudication hearing. There is no right to a jury at the disposition hearing.

(c) No disposition may be made under this section unless the court finds that the child is in need or that the protection of the public or the child requires that disposition be made. If the court does not so find, it shall dismiss the child and enter a final judgment without any disposition.

(d) If the court makes the finding specified in Subsection

(c) of this section, it may:

(1) place the child on probation on such reasonable and lawful terms as the court may determine for a period not to exceed one year, subject to extensions not to exceed one year each:

(A) in his own home or in the custody of a relative or other fit person;

(B) in a suitable foster home; or

(C) in a suitable public or private institution or agency, except the Texas Youth Council; or

(2) if the court or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct, the court may commit the child to the Texas Youth Council. (emphasis added)

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Attorney General
State of Texas
Austin, Texas

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(e) The Texas Youth Council shall accept a child properly committed to it by a juvenile court even though the child may be 17 years of age or older at the time of commitment.

The Texas Youth Council has advised the Juvenile Judge of El Paso County by letter dated October 3, 1973, a copy of which letter is attached to this opinion that aliens would be accepted, but later released to the United States Immigration and Naturalization Service. On the 8th day of February, 1974, Judge Pena committed a juvenile (alien) and upon arrival at the Reception Center in Gatesville the Probation Officer was advised that the juvenile would not be accepted. See copy of Officer Padilla's report attached to this letter.

Article 5143d, entitled Texas Youth Council, Vernon's Texas Civil Statutes, provides that:

Commitments by Juvenile Courts

"Section 12. When any child is adjudged delinquent under provisions of Section 13 of chapter 204 of the general laws of the regular session of the 48th Legislature, 1943, (Section 13, Article 2338-1, Vernon's Texas Civil Statutes, 1948) and the court does not release such child unconditionally, or place him on probation or in a suitable public or private institution or agency other than a state training school, the court shall commit him to the Texas Youth Council, but may suspend the execution of the order of such commitment." (emphasis added)

The question arises whether House Bill 139, 63rd Legislature, pages 11-70, Section E repeals in effect those provisions of Title Three, of the Family Code, relating to the commitment of juveniles to the Texas Youth Council or whether there is now a complete prohibition refusing the admittance of juveniles that happen to be aliens or non-residents to the Texas Youth Council. In the case of Conley v. Daughner's of the Republic of Texas, 151SW 877, stated the proposition in regards to repeal by appropriation bills by using the following language:

"Repeals by implication are not favored by the courts of the country, and its statute will not be held to

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repeal an existing one unless there is a irreconcilable repugnancy between the, or unless there is an evident design upon the part of the Legislature to supercede all prior legislation in connection with the subject-matter and to enact a complete law in regard to it."

That portion of House Bill 139, namely Subsection E regarding the admission and deportation of non-residents and aliens does not seem to stand such a test; but, on the other hand it is in perfect harmony with the existing laws as outlined above and merely supplements said laws. There is not one single word in it that indicates any desire or intention to prevent the juvenile courts of this state from committing aliens or non-residents to the Texas Youth Council. It merely addresses itself to the question of spending funds on the training and giving of medical treatment.

The only change, if any, made by the appropriation item, was to provide a method of deporting non-residents or aliens after it has been determined that they are aliens or non-residents. But, on the other hand, the appropriations bill does not give the authority to the Texas Youth Council the authority or right to refuse admittance of properly committed juvenile delinquents committed to it by juvenile courts of this state.



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

February 10, 1975

The Honorable Steve W. Simmons
District Attorney
401 City-County Bldg.
El Paso, Texas 79901

Opinion No. H- 521

Re: Whether Texas Youth
Council must accept juvenile
aliens properly committed to
it by a juvenile court.

Dear Mr. Simmons:

You ask whether the Texas Youth Council (TYC) is required to accept juvenile aliens that have been properly committed to it by a state juvenile court in accordance with section 54.04 of the Texas Family Code. You advise that on occasion the TYC has refused to accept juvenile aliens committed to it by a juvenile court in your district, apparently on the grounds that it is prohibited from accepting aliens by a rider contained in the current General Appropriations Act which provides:

e. ADMISSION AND DEPORTATION OF
NONRESIDENTS AND ALIENS. None of the moneys appropriated to the Department of Health, Department of Mental Health and Mental Retardation and the Texas Youth Council may be expended for the training or medical treatment except in emergencies of any student or patient who is not a citizen or resident of this state. For the purpose of this provision, affidavits from two reputable persons shall be deemed adequate evidence of citizenship or residency.

The cost of deporting any nonresident or alien may be paid by any of the institutions covered by this Section from appropriated funds available to such institutions. . . .

Acts 1973, 63rd Leg., ch. 659, p. 1881.

Under the Texas Family Code, once a juvenile court has determined that a child brought before it has engaged in delinquent conduct, the court may commit the child to the TYC. Family Code § 54.04(d)(2). The TYC is not authorized to refuse to admit a child properly committed to its custody by a juvenile court. Family Code § 54.04(e).

The rider to the TYC's appropriations concerning the admission and deportation of aliens does not provide that aliens committed to the TYC shall not be accepted. Rather it indicates that the TYC will admit aliens and nonresidents that have been committed to it and then take steps to have them deported. While aliens and non-residents remain in the TYC's custody, the rider provides that no appropriated funds shall be expended for their training or for medical treatment of them except in case of an emergency.

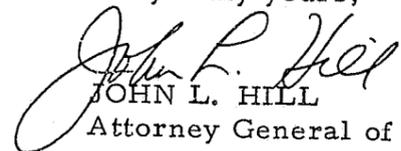
Thus there is no conflict between this rider and the relevant provisions of the Family Code. Under both the TYC is required to accept all children --including aliens-- properly committed to it by the State's juvenile courts. We do not consider other questions involving the rider.

SUMMARY

The Texas Youth Council must accept all children, including aliens, properly committed to it by the State's juvenile courts. The Legislature has limited the funds which can be spent on aliens who remain in the custody of the Texas Youth Council prior to deportation.

APPROVED:


DAVID M. KENDALL, First Assistant

Very truly yours,

JOHN L. HILL
Attorney General of Texas


C. ROBERT HEATH, Chairman
Opinion Committee

Section e Special Provisions

Special Provisions Relating Only To Institutions, Agencies, Or Offices
Under The Jurisdiction Of The Board Of Health, Board Of Mental
Health And Mental Retardation And The Texas Youth Council

General Appropriations Bill

63rd Legislature

e. ADMISSION AND DEPORTATION OF NONRESIDENTS AND ALIENS.

None of the moneys appropriated to the Department of Health, Department of Mental Health and Mental Retardation and the Texas Youth Council may be expended for the training or medical treatment except in emergencies of any student or patient who is not a citizen or resident of this state. For the purpose of this provision, affidavits from two reputable persons shall be deemed adequate evidence of citizenship or residency.

The cost of deporting any nonresident or alien may be paid by any of the institutions covered by this Section from appropriated funds available to such institutions. It is further provided that such expenditures for the purposes of deporting nonresident or alien patients or of returning Texas patients or students from other states, shall be governed by the following additional rules and procedures:

- (1) In order to conserve the use of personnel and reduce the costs of deporting patients, the superintendent of a hospital or institution named in Article II which is deporting patients may also include in his scheduled deportation trip patients approved for deportation from other State hospitals and institutions and be reimbursed by such other hospitals and institutions

ATTACHMENT III

and be reimbursed by such other hospitals and institutions for their pro rata shares of the costs incurred. All such reimbursements are hereby appropriated to such hospital or institution for general operating expenses or other operating expenses.

(2) To simplify the disbursement of funds for deportation purposes, the Department of Mental Health and Mental Retardation and State Board of Health and hospitals or institutions under their jurisdiction may request commercial transportation companies to furnish the required transportation of patients and of attendants designated to accompany such patients. The cost of such transportation services is to be paid upon submission of purchase vouchers to the governing board or to the hospital or institution under its jurisdiction requesting such transportation services.

(3) The mental health agency of any other state or any institution operated thereunder which is deporting patients to Texas State Hospitals, may be paid a pro rata share of any expenses incurred when patients from Texas State Hospitals are taken back to their state of residency by personnel of the aforementioned agency upon their return trip.

END