

CUSTODY AND DETENTION
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A ROSE BY ANY OTHER NAME . . .
“TAKING A CHILD INTO CUSTODY” IS THE EUPHEMISTIC TERM FOR “ARREST.”

We apply the laws of arrest to determine the validity of taking the child into custody or the validity of a search.

FAMILY CODE PROVISIONS THAT APPLY TO CUSTODY
51.095(d)
52.01, 52.015, 52.0151
52.02
52.025
52.026

§52.01

It's easier to take a child into custody than to arrest an adult.

Pursuant to a juvenile court order

Pursuant to laws of arrest

By law enforcement – this includes school peace officer (commissioned under Education Code) if probable cause exists for delinquent conduct, CINS, or probation violation.

Probation Officer can 'arrest' if probable cause exists for believing child has violated a condition of release or probable cause exists to believe child has violated condition of juvenile probation.

WARNING NOTICES IN LIEU OF CUSTODY

Law enforcement can give a child a warning instead of arresting if guidelines have been set up for this. §52.01(c).

Warning must: identify child and conduct, be provided to parent or guardian as soon as practicable, filed with agency.

Instead of taking into custody, law enforcement can also return a child to school if the child is in violation of attendance laws.

§52.015

Directive to apprehend – juvenile court order to law enforcement or probation officer to take child into custody.

No appeal can be taken from the court's order, but it can be reviewed in terms of searches, or statements taken, or other evidence seized.

**AFTER YOU CATCH THE CHILD, YOU MUST
RELEASE THE CHILD**

§52.02 - The family code provides very specific places a child must be taken after being taken into custody:

1. Juvenile Processing Office - §52.025;
2. Release to a parent or guardian;
3. Take to a designated detention facility ;
4. Take to a secure detention facility;
5. Take to a medical facility;
6. Dispose of the case, if it is a class c misdemeanor other than traffic and public intox - §52.03;
7. Take back to school, if principal agrees;
8. Take to place to get blood or breath if DUI or greater is suspected.

§52.02 - OTHER REQUIREMENTS

Child must be taken to one of the previously listed places without unnecessary delay.

Person taking child into custody must promptly give notice to parent or guardian and give the reason for taking the child into custody.

WHAT IS UNNECESSARY DELAY?

Roquemore v. State, 60 S.W.3d 862 (Tex. Crim. App. 2001)(detour to recover stolen property on way to processing office was unnecessary).

In re G.A.T., 16 S.W.3d 818 (Tex. App. - Houston [14th Dist.] 2000, pet. denied)(Taking juveniles to crime scene for identification before taking to JPO was unnecessary).

Contreras v. State, 67 S.W.3d 181 (Tex. Crim. App. 2001)(50 minute delay to secure murder scene was not unnecessary).

WHEN IS NOTIFICATION 'PROMPT'?

In re J.A.B., 281 S.W.3d 62 (Tex. App. – El Paso 2008, no pet.)(40 minute delay in notifying mother not unreasonable).

Ray v. State, 176 S.W.3d 544 (Tex. App. – Houston [1st Dist.] 2004, pet. ref'd.)(Eight and a half hours delay in notification not unreasonable under circumstances).

Vann v. State, 93 S.W.3d 182 (Tex. App. – Houston [14th Dist.] 2002, pet. ref'd)(Notification of an adult cousin will satisfy spirit of the statute).

State v. Simpson, 105 S.W.3d 238 (Tex. App. – Tyler 2003, no pet.)(2 day delay was not prompt).

WHAT IS A JPO?

§52.025

Designated office for temporary detention - Only kept up to 6 hours

- To wait for parent or guardian to pick up;
- To complete necessary forms;
- To photograph or fingerprint ;
- To issue warnings;
- To receive a statement.

Can't leave child alone and child has right to parent, guardian or attorney (but see §61.106 – failure to provide a right can't be used in suppression or appeal).

§51.095(D) – CUSTODIAL INTERROGATION

This section defines custody as :

while child is in detention facility or other place of confinement;

while child is in custody of an officer;

while child is in possession of the Department of Family and Protective Services and is suspected to have engaged in conduct that violates a penal law.

FACTORS FOR DETERMINING CUSTODY

- 1) Probable cause to arrest
- 2) Subjective intent of the police
- 3) Focus of the investigation
- 4) Subjective belief of the defendant.

Dowthitt v. State, 931 S.W.2d 244 (Tex. Crim. App. 1996)

Child's age is to be considered in making a custody analysis. *J.D.B. v. North Carolina*, 131 S.Ct. 2394 (2011); *Martinez v. State*, 131 S.W.3d 22 (Tex. App. – San Antonio 2003, no pet.).

IN CUSTODY CASES

In the Matter of S.A.R., 931 S.W.2d 585 (Tex. App. – San Antonio 1996)(child taken by four officers in marked patrol car to police station, informed she was a suspect, was photographed and fingerprinted).

In re U.G., 128 S.W.3d 797 (Tex. App. – Corpus Christi 2004, rev. denied)(Child taken from grandmother's house in a patrol car, handcuffed, and read rights).

NOT IN CUSTODY CASES

Matthews v. State, __ SW3d __, 2016 WL 6561467 (Tex. App. Houston [14th Dist] Nov. 6, 2016)(In unlocked room, parents not excluded, explicitly told he could leave, detectives in plain clothes, weapons were not visible)

Gonzales v. State, 467 S.W.3d 595 (Tex. App. San Antonio 2015, pet. ref'd)(Voluntarily went to police station with mom, told free to leave, detective did not consider juvenile in custody, no plan to arrest yet, juvenile left police station with mom after statement).

In re J.T.M., 441 S.W.3d 455 (Tex. App. El Paso 2014)(Juvenile not handcuffed, not placed in patrol car, investigation consistent with temporary detention).

NON-CUSTODY CAN BECOME CUSTODY

In re D.J.C., 312 S.W.3d 704 (Tex. App. – Houston [1st Dist] 2009, no pet.)

Excluding the child’s grandmother from the interrogation room, having a magistrate read the warnings, and locking the door to the interview room changed the non-custodial interrogation into a custodial one.

FACTORS THE COURTS LOOK AT

- Child removed to some other place?
- Transported in patrol car?
- Handcuffed?
- Explicitly told they could leave?
- Told they were a suspect?
- Parents or guardians kept out?
- Placed in a locked/unlocked room?
- Rituals of arrest performed (reading rights, photographing, fingerprinting)?
- Allowed to leave later (after a statement for example)?
- Did probable cause exist to arrest?

FAMILY CODE PROVISIONS THAT APPLY TO DETENTION

§51.12, 51.125, 51.126

§ 54.01, 54.011, 54.012

PLACES AND CONDITIONS OF DETENTION

§51.12

Juveniles should be detained separate from adults.

Detention facilities must be certified. Shall be inspected annually.

If no certified detention facility exists in a county, child can be held in another county.

DETENTION HEARINGS

First hearing must occur within second working day after child is taken into custody (except if on a Fri or Sat). Probable cause finding is required at this time. Then must have hearing every 10 working days.

Can waive subsequent hearings, but not first.

Reasonable notice of hearing – time, place, purpose – to child and parents or guardians.

Child must be informed of rights – to attorney and right to remain silent.

Court can consider written reports – attorney for child must have access to these.

No statement made by child at hearing can be used against child.

Referee may conduct hearing unless party objects.

TIME LIMITS FOR STATE

Child must be released if a petition has not been filed by 30th working day after initial detention hearing in a capital felony, aggravated controlled substance felony, or first degree felony.

Child must be released if a petition has not been filed by 15th working day after initial detention hearing in all other offenses.

PRESUMPTION IS IN FAVOR OF RELEASE

Unless:

- 1) Likely to abscond or be removed;
- 2) No suitable supervision exists;
- 3) Has no one to bring him/her to court;
- 4) May be dangerous to self or public
- 5) Was previously found delinquent and is likely to re-offend if released.

OTHER DETAILS

Detention hearings can occur via interactive video recordings (§54.012).

Referee can order parents of released child to cooperate under threat of contempt.

Status offenders are entitled to detention hearings also (§54.011).

THANK YOU!

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