



Determinate Sentencing

Sharon Pruitt
Assistant Attorney General
Juvenile Crime Intervention
Criminal Prosecutions Division

Views expressed are those of the presenter, do not constitute legal advice, and are not official opinions of the Office of the Texas Attorney General.



Prosecutorial Discretion

Sec. 53.045(a) Family Code

- ▶ Prosecutor files the petition
- ▶ Prosecutor refers the petition to the grand jury

Sec. 53.045(e) Family Code

- ▶ Prosecutor may not refer a petition for certain sexual assault or aggravated sexual assault offenses unless the child is more than 3 years older than the victim

Sec. 56.03 Family Code

- ▶ State has the right of appeal in determinate petition



Offenses Eligible for Determinate Sentence

Sec. 53.045 Family Code

- ▶ Capital murder, murder, manslaughter
- ▶ Aggravated kidnapping
- ▶ Aggravated sexual assault, sexual assault, indecency with a child
- ▶ Aggravated assault
- ▶ Aggravated robbery
- ▶ Injury to a child, elderly individual, or disabled individual, if punishable as a felony (other than a state jail felony)
- ▶ Felony deadly conduct involving discharging a firearm



Offenses Eligible

- ▶ Drug cases, if the conduct constitutes a first degree felony or an aggravated controlled substance felony
- ▶ Criminal solicitation
- ▶ Criminal solicitation of a minor
- ▶ Criminal attempt, if the offense attempted was capital murder, murder, or an offense listed by Article 42A.054(a), CCP
- ▶ Arson, if bodily injury or death is suffered by any person by reason of the commission of the conduct
- ▶ Intoxication manslaughter or
- ▶ Criminal conspiracy, if the conspiracy relates to offense of any of the provisions referenced above



Grand Jury

Sec. 53.045(b) Family Code

- ▶ The grand jury may approve a petition submitted by a vote of nine

Sec. 53.045(c) Family Code

- ▶ The grand jury may investigate

Sec. 53.045(d) Family Code

- ▶ If the grand jury approves, the approval shall be certified to the juvenile court and the certification entered into the record
- ▶ Upon approval by the grand jury, the petition is an indictment for transfer to TDCJ purposes



Rights Associated with Determinate

Sec. 51.04(c) Family Code

- ▶ A constitutional county court does not have jurisdiction of a determinate sentence petition

Sec. 54.10(e) Family Code

- ▶ A referee may not hold an adjudication, disposition or modification of a determinate sentence

Sec. 54.03(c) Family Code

- ▶ Jury of 12 at adjudication

Sec. 54.04(a)

- ▶ Jury of 12 at disposition if written election before voir dire



Habitual Offender

Sec. 51.031 Family Code

- ▶ Habitual felony conduct is conduct violating a penal law of the grade of felony, other than a state jail felony, if:
 - (1) the child has at least two previous final adjudications of the grade of felony
 - (2) the second previous final adjudication is for conduct that occurred after the date the first previous adjudication became final and
 - (3) all appeals have been exhausted.

- ▶ An adjudication is final if the child is placed on probation or committed to the Texas Juvenile Justice Department.

Sec. 54.04(m) Family Code

- ▶ Disposition range is based on degree of felony



Record Cannot Be Sealed

Sec. 58.03(b) Family Code

- ▶ A court **may not order the sealing of the records** of a person who has received a determinate sentence for engaging in delinquent conduct that violated a penal law listed in Section 53.045 or engaging in habitual felony conduct as described by Section 51.031.

- ▶ Pending HB 677 would allow sealing of a determinate probation that does not get transferred to district court



Probation

Sec. 54.04(q) Family Code

- ▶ If court or jury sentences a child to commitment in the Texas Juvenile Justice Department or a post-adjudication facility for not more than 10 years, the court or jury may place the child on probation for a period of not more than 10 years
- ▶ Probation term may be extended under a modification, but total term, including extensions may not exceed 10 years
- ▶ Court may discharge from probation before 19th birthday
- ▶ If probation is not transferred, probation ends on the probationer's 19th birthday



Jurisdiction May Continue

Sec. 54.051(h) Family Code

- ▶ If the juvenile court exercises jurisdiction over a person who is 18 or 19 years of age or older, **post-appeal or as an incomplete proceeding**, the respondent can still receive probation from the court or jury, the court sets the conditions of probation and immediately transfers the case to the appropriate District Court for supervision.



Incomplete Proceedings

Sec. 51.0412 Family Code

- ▶ The court retains jurisdiction over a person, without regard to the age of the person, if:
 - the petition or motion was filed while the respondent was younger than 18 or 19 years of age, as applicable;
 - the proceeding is not complete before the respondent becomes 18 or 19 years of age, as applicable; **and**
 - the court enters a finding in the proceeding that the prosecuting attorney **exercised due diligence in an attempt to complete the proceeding** before the respondent became 18 or 19 years of age, as applicable.



Probation Transfer

Sec. 54.051 Family Code

- ▶ On **state's motion**, the juvenile court shall hold a hearing to determine whether to transfer the child to an appropriate district court or discharge the child from the sentence of probation.
- ▶ The hearing must be conducted before the person's 19th birthday.
- ▶ If the court determines to discharge the child, the court shall specify a date on or **before the child's 19th** birthday to discharge the child.
- ▶ If the court determines to transfer the child, the court shall transfer the child to an appropriate district court **on the child's 19th** birthday.
- ▶ The juvenile court may transfer a child to district court without a showing that the child violated a condition of probation.



District Court Supervision

Sec. 54.051(d-1) Family Code

- ▶ Only the petition, the grand jury approval, the judgment of determinate sentence probation, and the transfer order are a part of the **district clerk's public record**.

Sec. 54.051(e) Family Code

- ▶ The district court shall place the person on community supervision for the remainder of the person's probationary period and under conditions consistent with the juvenile court order.

Sec. 54.051(e-1) Family Code

- ▶ The restrictions on a judge placing a defendant on community supervision and minimum periods of supervision **do not apply** to a case transferred from the juvenile court.



Orders Affecting Parents

Sec. 54.041(h) Family Code

- ▶ The **district court shall require the payment of any unpaid restitution** as a condition of the community supervision.
- ▶ The **liability of the child's parent for restitution may not be extended by transfer to a district court** for supervision.



Other Rights Transferred

Sec. 54.051(e-3) Family Code

- ▶ Eligibility for early discharge from community supervision

Sec. 54.051(g) Family Code

- ▶ If the juvenile court defers sex offender registration, the **authority to reexamine the need for registration** on completion of treatment **is transferred** to the court to which probation is transferred.

Sec. 54.051(h) Family Code

- ▶ If the juvenile court requires registration, the **authority of the court to excuse** further compliance with the registration requirement **is transferred** to the district court.



Probation Violation

Sec. 54.051(e-2) Family Code

- ▶ If a person violates a condition or if the person violated a condition of probation and that violation was not discovered by the state before the 19th birthday, **the district court shall dispose of the violation.**
- ▶ If the judge revokes community supervision, the **judge may reduce the prison sentence to any length** without regard to the minimum terms.



Post Adjudication Facility

Sec. 54.04011 Family Code

- ▶ "Post-adjudication secure correctional facility" is a facility operated by or under contract with a juvenile board or local juvenile probation department.
- ▶ Applies only to a county where the juvenile board or local juvenile probation department operates or contracts for the operation of a post-adjudication secure correctional facility.
- ▶ Applies through a **direct commitment or a modification** of a determinate sentence.



TJJD Commitment

Sec. 54.04(d)(3) Family Code

- ▶ Capital or first degree eligible offense: up to 40 years
- ▶ Second degree eligible offense: up to 20 years
- ▶ Third degree eligible offense: up to 10 years

Sec. 54.04(g) Family Code

- ▶ Affirmative finding of a deadly weapon required

Sec. 54.05(a), (f) Family Code

- ▶ Modification of probation to a commitment with a possible transfer to TDCJ



TJJD Minimum Lengths of Stay

Sec. 245.051(c) Human Resources Code

- ▶ Capital murder: 10 years
- ▶ First degree eligible offense: 3 years
- ▶ Second degree eligible offense: 2 years
- ▶ Third degree eligible offense: 1 year

Sec. 54.052(d) Family Code

- ▶ TJJD shall grant credit for time served in computing **eligibility** for parole and discharge.

Sec. 244.014 Human Resources Code

- ▶ Must be at least 16 years of age to be referred for transfer to TDCJ



Release or Transfer Hearing

Sec. 54.11(a) Family Code

- ▶ The court shall set a time and place for a hearing on the possible transfer or release of the person on receipt of:
 1. a referral under Section 244.014(a), Human Resources Code, **for the transfer to TDCJ**;
 2. a request under Section 245.051(d), Human Resources Code, **for approval of release on parole**; or
 3. On receipt of a referral under Section 152.0016(g) or (j), Human Resources Code, **for release** under supervision from a post-adjudication facility **or transfer** to TDCJ.



Release or Transfer Hearing

Sec. 54.11(b) Family Code

- ▶ The court shall notify the following of the time and place of the hearing:
 - (1) the **person to be transferred or released**
 - (2) the parents of the person
 - (3) any legal custodian of the person, including TJJJ or a juvenile board or local juvenile probation department if the child is committed to a post-adjudication facility
 - (4) the **office of the prosecuting attorney**
 - (5) the victim of the offense or a member of the victim's family and
 - (6) any other person who has filed a written request with the court to be notified of a release hearing.



Release or Transfer Hearing

Sec. 54.11(d) Family Code

- ▶ The court may consider written reports and supporting documents from probation officers, professional court employees, professional consultants, TJJJ employees or employees of a post-adjudication secure correctional facility in addition to the testimony of witnesses.
- ▶ On or before the **fifth day before the date of the hearing**, the court shall provide the attorney for the person to be transferred or released with access to all written matter to be considered by the court.
- ▶ All written matter is admissible in evidence at the hearing.



Release or Transfer Hearing

Sec. 54.11(e) Family Code

- ▶ At the hearing, the person to be transferred or released is entitled to an attorney, to examine all witnesses against him, to present evidence and oral argument.

Sec. 54.11(f) Family Code

- ▶ A hearing is open to the public unless the person to be transferred or released under supervision waives a public hearing with the consent of his attorney and the court.

Sec. 54.11(g) Family Code

- ▶ A hearing must be recorded by a court reporter or by audio or video tape recording, and the record of the hearing must be retained by the court for at least two years after the date of the final determination on the transfer or release.



Transfer Hearing

Sec. 54.11(h) Family Code

- ▶ The hearing on a person who is referred for transfer under Section 152.0016(j) or 244.014(a), Human Resources Code, shall be held **not later than the 60th day after the date the court receives the referral.**

Sec. 54.11(i) Family Code

- ▶ On conclusion of the hearing on a person who is referred for transfer, the court may, as applicable, order:
 - (1) the **return of the person** to TJJD or post-adjudication facility **or**
 - (2) the **transfer of the person to the custody** of TDCJ for the completion of the person's sentence.



Release Hearing

Sec. 54.11(j) Family Code

- ▶ On conclusion of the hearing on a person who is referred for release under supervision, the court may, as applicable, order the return of the person to TJJD or post-adjudication facility:
 - (1) with approval for the release under supervision; or
 - (2) without approval for the release under supervision.



Detention Pending Transfer

Sec. 54.11(l) Family Code

- ▶ Pending the conclusion of a transfer hearing, the juvenile court shall order that the person who is referred for transfer be **detained in a certified juvenile detention facility** as provided by Subsection (m).

Sec. 54.11(m) Family Code

- ▶ The detention of a person in a certified juvenile detention facility must comply with the detention requirements, except that, to the extent practicable, the person must **be kept separate from children detained in the same facility**.



Detention Pending Transfer

Sec. 54.11(l) Family Code

- ▶ If the person is at least 17 years of age, the juvenile court **may order** that the person be detained without bond in an appropriate **county facility for the detention of adults** accused of criminal offenses.

Sec. 54.11(n) Family Code

- ▶ If the juvenile court orders that a person who is referred for transfer be detained in a county facility under Subsection (l), the county **sheriff shall take custody of the person under the juvenile court's order.**



TJJD Termination of Control

Sec. 245.151 (b), (c) Human Resources Code

- ▶ The department **shall discharge without a court hearing** a person committed for a determinate sentence who has not been transferred to TDCJ **on the date that the time spent in detention** in connection with the committing case **plus the time spent at the department under the order of commitment equals the sentence.**
- ▶ The department **shall transfer to TDCJ**, a person **who is the subject of an order transferring the person** to the custody of TDCJ **for the completion of the person's sentence.**



TJJD Termination of Control

Sec. 245.151(d), (e) Family Code

- ▶ Except as provided by Subsection (e), the department **shall discharge** from its custody a person not already discharged **on the person's 19th birthday**.
- ▶ The department **shall transfer** a person who has been sentenced under a determinate sentence or who has been returned to the department, **to the custody of TDCJ** on the person's 19th birthday, if the person has not already been discharged or transferred, **to serve the remainder of the person's sentence on parole** as provided by Section 508.156, Government Code.



TDCJ Parole

Sec. 245.152(c) Human Resources Code

- ▶ TDCJ **shall grant credit for sentence time served** by a person **at the department and in a juvenile detention facility** in computing the person's eligibility for parole and discharge from TDCJ.



TDCJ Parole

Sec. 508.156 Government Code

- ▶ A **parole panel shall review the person's records and may interview the person** or any other person the panel considers necessary to determine the conditions of parole.
- ▶ The panel **may impose any reasonable condition** of parole on the person that the panel may impose on an adult inmate.
- ▶ The panel shall furnish the person with a **written statement clearly describing the conditions and rules** of parole. The person must accept and sign the statement as a precondition to release on parole.
- ▶ While on parole, the person **remains in the legal custody of the state** and shall comply with the conditions of parole ordered by a panel.



TDCJ Parole

Sec. 508.156 Government Code

- ▶ The period of parole for a person released on parole is the term sentenced **less calendar time served** at TJJD or in a post-adjudication facility, and in a juvenile detention facility.
- ▶ For purposes of this chapter, a person released from the TJJD or the custody of a juvenile board or local juvenile probation department on parole under this section **is considered to have been convicted of the offense for which the person has been adjudicated.**



Contact Information

Sharon N. Pruitt
Assistant Attorney General
Juvenile Crime Intervention
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711-2548
(512) 936-6406
sharon.pruitt@oag.texas.gov