

# Adjudication Hearings



## Speaker Information

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*Submitted with permission and written by*  
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**with additions and updates**  
**by Michael C. O'Brien**

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## **INTRODUCTION:**

Texas Family Code §54.03(a)

A child may be found to have engaged in delinquent conduct or conduct indicating the need for supervision (CINS) . . . conducted in accordance with the provisions of this section.

### **NO RIGHT TO WAIVER OF AN ADJUDICATION HEARING**

In the Matter of N.S.D., 555 S.W. 2d 807 (Tex.Civ.App.-El Paso 1977)

Held: A waiver of the entire adjudication hearing would be something quite beyond the possibility of the waiver provisions.

#### **Expedition of Adjudication:**

A juvenile and his/her attorney in accordance with Texas Family Code §51.09 may waive the calling of witnesses and agree that if the witnesses were to testify they would testify to the facts as stated by the prosecutor as alleged in the petition. Thus, the trial court has evidence upon which to make a ruling in the case.

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This process is similar to the Texas Rules of Civil Procedure. Rule 263 wherein an agreed statement of the facts is reduced to writing and filed with the clerk of the court. The juvenile proceeding differs in that the statement of facts as presented by the prosecutor is read into the court record.

#### **Judicial Confession:**

A juvenile can also confess under oath on the witness stand to the alleged facts which also provides the court an evidentiary basis upon which to find the juvenile engaged in delinquent conduct.

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## **PLEAS:**

In the Matter of E.Q., 839 S.W.2d 144 (Tex.App.-Austin 1992)

The child's plea must be knowingly, voluntarily and intelligently made. Pleas made upon erroneous information provided by defense counsel and/or prosecutor regarding the terms of years to be served pursuant to a Determinate Sentence plea were not knowingly, voluntarily or intelligently made.

#### **Protection Provided for Juveniles:**

Texas Family Code § 54.03(j)

Allows the juvenile to withdraw his/her plea/stipulation, should the juvenile court refuse to accept the plea bargain. This is similar to the Code of Criminal Procedure, Article 26.13 for adults.

## **JUDICIAL ADMONISHMENTS**

2 types of Admonishments

A. Texas Family Code § 54.03(b) – Admonitions required in every juvenile adjudication hrg.

B. Texas Family Code § 54.034 (Plea Agreement Admonishments)

A WARNING regarding a juvenile's limited right to appeal following a plea agreement regarding disposition.

C. MANDATORY ADMONISHMENTS: § 54.03(b)

Texas Family Code § 54.03(b) provides:

At the beginning of the adjudication hearing, the juvenile judge shall explain to the child and his parents/guardians or guardian ad litem.

### Who

Judge must explain personally to Respondent

See In the Matter of N.S.D., 555 S.W.2d 807 (Tex. Civ.App.-El Paso 1977) Appellate Court held that a document provided by the Court to the juvenile, his parent and his attorney, that listed all the admonishments of § 54.03(b), however, the document instructed the juvenile to direct any question, regarding the admonishments to either the bailiff or the Court's secretary, was obvious error.

### How

The trial court and only the trial court must explain the allegation to the juvenile. This statutory duty cannot be delegated to the prosecutor. However, under a harm analysis, the error was not harmful under the circumstances.

In the Matter of K.L.C., 990 S.W. 2d 242 (Tex.1999) ROBERT O. DAWSON, TEXAS JUVENILE LAW (6<sup>th</sup> ED. 2004)

### When

§54.03(b) requires the court to give the admonishments "at the beginning of the adjudication hearing."

1. The allegations made against the child.

a. Lesser Included offenses:

A.E.M. v. State, 552 S.W. 2d 952 (Tex.Civ. App.-San Antonio 1977)

The San Antonio Court of Appeals held the requirements of Texas Family Code §54.03 were not met as the trial court did not "explain" (to make something plain) that the juvenile could be found to have engaged in aggravated rape or the lesser included offenses of rape or aggravated assault.

A conflict in case law: In the Matter of D.L.K., 690 S.W. 2d 654 (Tex.App.-Eastland 1985)

Wherein the 11<sup>th</sup> court of Appeals expressly refused to follow the language of A.E.M. requiring admonitions regarding lesser included offenses.

Until this conflict in case law is resolved, if it ever is, the only safe course of action is for the juvenile court to take care to admonish the respondent not only of the offense alleged, but of any lesser included offenses that may be implicated by the charge.

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b. Law of Parties:

In the Matter of L.A., UNPUBLISHED No. 04-97-00434-CV, 1998 WL 904294, 1998 Tex. App. Lexis 8016, Juvenile Law Newsletter ¶ 99-1-10 (Tex. App.-San Antonio 1998)

"A reading of §54.03 does not require the trial court to explain the theory on which the state will prove its case".

c. Adequate Explanation:

In the Matter of B.J., 960 S.W.2d 216 (Tex.App.-San Antonio 1997)

The 4<sup>th</sup> court of Appeals held that the juvenile was not properly admonished regarding his right against self-incrimination, nor his right to confront and cross examine witnesses. The trial court also failed to properly admonish the juvenile regarding his right to a jury trial as the trial court had the juveniles attorney do this.

2. The nature and possible consequences of the proceeding, including the law relating to the admissibility of the record of a juvenile court adjudication in a subsequent adult criminal proceeding. Texas Family Code §54.03(b)(2).

a. In a standard delinquency case, the court must inform the juvenile of the possible dispositions available, which generally include probation in or outside of the home, until his/her 18th birthday.

If the offense is applicable to TYC commitment, then the court should admonish the juvenile about possible commitment to TYC until age 21. [Texas Family Code §54.04(d)(ii)]

If it is a Determinate Sentence Case, then the court should admonish the juvenile that disposition may include probation for up to 10 years {Texas Family Code §54.04(q)}, or Determinate Period not to exceed 40 years for Capital, Aggravated Controlled Substance Felony, or First Degree Felony (or)

Up to 20 years for a Second Degree Felony (or)  
Up to 10 years for a Third Degree Felony.

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If it is a Felony conduct adjudication, the court must admonish the juvenile that Texas Family Code §51.031 Habitual Felony Conduct may be applicable and a Felony Adjudication, when combined with another separate Felony Adjudication may allow for a Third Felony charge to be prosecuted under the Determinate Sentencing Act as habitual felony conduct.

b. Admissibility of Juvenile Record

Texas Family Code §54.03(b)(2)

The court must admonish the juvenile regarding "...the law relating to the admissibility of the record of a juvenile court adjudication in criminal proceeding."

P.L.W. v. State, 851 S.W. 2d 383 (Tex.App-San Antonio 1993)

Held that the failure to admonish the juvenile that his juvenile record may be admissible against him in a criminal proceeding, was reversible error.

- i. Authority to use juvenile record in adult criminal proceedings. Texas Code of Criminal Procedures Article 37.07 Sec 3(a) provides that during the penalty phase of an adult criminal trial evidence of an adjudication of delinquency for a felony or misdemeanor punishable by confinement in jail, may be admitted.

Section 3(a) also allow the judge or jury to consider □any matter the court deems relevant to sentencing."

Under Section § 51.13(d), a felony delinquency adjudication (can be a regular petition or determinat sentencing or habitual felony conduct or a modification disposition of either of these) resulting in commitment or sentence to the TYC counts as a prior felony conviction under the repeat offender provisions of Penal Code Subsections 12.42(a), (b), and (c)(1), should the juvenile respondent later be charged in criminal court with a first, second or third degree felony. This provision applies only to repeat offenders under Section 12.42, not to the habitual offender under Section 12.42(d) or mandatory life for a second sex offense under Section 12.42 (c)(2). Because a juvenile felony adjudication counts as a prior felony conviction, it would be admissible in evidence in criminal proceedings. Therefore, the juvenile court judge should admonish the respondent as to this provision providing for enhancement of the range of punishment in a criminal case based upon a juvenile felony adjudication and commitment or sentence.

3. Privilege Against Self Incrimination: Texas Family Code §54.03(b)(3)

". . . nor shall any person . . . be compelled in any criminal case to be a witness against himself."  
(United States Constitution Amendment V)

Texas Family Code § 54.03.(b)(3)

Requires admonishments regarding a juvenile's "privilege against self incrimination."

Simply put, the court should ensure that the juvenile is admonished and that he/she won't be punished for not testifying and that if the juvenile does elect to testify, anything can be used against him/her.

4. Right to Trial and Confrontation of Witnesses: Texas Family Code § 54.03(b)(4)

Texas Family Code § 54.03 (b)(4)

The court shall also admonish as to the child's right to trial and confrontation of witnesses. "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . to be confronted with the witnesses against him;

(United States Constitution Amendment VI)

5. Right to Attorney

. . . and to have the Assistance of Counsel for his defense."

(United States Constitution Amendment VI)

Texas Family Code § 54.03 (b)(5)

The court shall also admonish regarding "the child's right to an attorney if he is not already represented."

6. Right to a Trial By Jury: Texas Family Code § 54.03 (b)(6)

CAVEAT-OBJECTIONS AND ADMONISHMENTS

(Texas Family Code §54.03(i)

Basically: In order to preserve error for appellate or collateral review for failure to provide §54.03(b) admonishments, the child's attorney must object to any failure either:

- i. prior to the beginning of testimony in a contested adjudication, or
- ii. prior to the child's plea to a petition or agreement to a stipulation.

Clarification Regarding Texas Family Code § 54.03(i) and Texas Rules of Appellate Procedure. Due to revision of the Appellate Rules effective September 1, 1997, Rule 52 became a reference to Rule 33.1 that is substantively the same as Rule 52.

Thus, if an offense occurred on or after September 1, 1997, a timely trial objection pursuant to §54.03(i) is required. Offenses prior to September 1, 1997 do not require a trial objection. The Texas Supreme Court also held that showing of harm, was required as a predicate to an appellate reversal. The Supreme Court held harmless error for deficient admonition regarding confrontation of witnesses because juvenile confronted the witness at a bench trial and was adjudicated which made the admonition of criminal record consequences moot.

In the Matter of C.O.S., 988 S.W. 2d 760 (Tex.1999)

7. Harm Analysis

Additional Proof that Harm Need be Shown

In the Matter of D.I.B., 988 S.W. 2d 753 (Tex. 1999)

Case regarding an erroneous admonition that only a jury could place the juvenile on probation in a determinate sentencing case; the juvenile elected for the jury trial and received 20 years from the jury. This was a misstatement of the law, and the juvenile relied upon it to her detriment. "The decisions in Cain and Matchett thoughtfully explain why a harm analysis should be applied even in cases in which the trial court fails to give statutorily mandated explanations or admonishments. If the error could not have affected the outcome of the proceeding and does not transgress certain constitutional guarantees, such as total deprivation of the right to counsel or trial by a judge who was not impartial, then that error should not require reversal. Importantly, however, the Court of Criminal Appeals has also observed that in many cases, the threshold for demonstrating harm is minimal." 988 S.W. 2d at 758.

NOTE: See Chapter 19 of DAWSON'S TEXAS JUVENILE LAW (6<sup>th</sup> ED. 2004) for further discussion of harmless error.



8. Areas Where Admonishments are NOT REQUIRED:

Immigration Consequences:

In the Matter of E.J.G.P., 5 S.W. 3d 868 (Tex. App.-El Paso 1999)

The 8<sup>th</sup> Court of Appeals concluded that immigration consequences to a juvenile adjudication are a collateral consequence because they involve civil proceedings administered by an independent agency over which the trial judge has no control.

CONTRAST: Texas Code of Criminal Procedure Article 26.13(a)(4) Requiring court admonishment, for a non-U.S. citizen adult prior to a guilty plea, of possible deportation, exclusion from admission, or denial of naturalization consequences of a conviction.

In the Matter of R.F. UNPUBLISHED, {No. 07-02-0298-CV, 2003 WL 21404126, 2003

Tex. App. Lexis 5170, Juvenile Law Newsletter □□□03-3-10 (Tex. App.-Amarillo 2003)(holding that the Code of Criminal Procedure admonition with regard to immigration status and consequences does not apply in juvenile cases).

9. Areas Where Admonishments are NOT REQUIRED but RECOMMENDED:

a. Sex offender Registration

In the Matter of B.G.M., 929 S.W. 2d 604 (Tex. App.-Texarkana 1996)

The 6<sup>th</sup> Court of Appeals held that the Sex Offender Registration Act did not call for registration and considered the Act to be a remedial measure and not a punitive measure with the possible consequences of failing to register as a collateral consequence.

CONTRAST:

Texas Code of Criminal Procedure Article 26.13(a)(5)

Requiring court admonishment for an adult defendant prior to a guilty plea. The fact that the defendant will be required to meet the registration requirements of Chapter 62, if the defendant is convicted of or placed on deferred adjudication for an offense for which a person is subject to registration under that chapter.

b. Determinate Sentences:

No reported cases on point, however, general admonishments regarding possible transfer to the Texas Department of Criminal Justice Institution Division to serve the balance of the Determinate Sentence. The eligibility of TYC parole following the statutory minimum length of stays:

- i. 10 years minimum for Capital Murder
- ii. 3 years for Aggravated Controlled Substance Felony, First Degree Felony
- iii. 2 years for Second Degree Felony
- iv. 1 year for Third Degree Felony

Texas Human Resources Code § 61.081(f).

10. Plea Agreement Admonishments: The Second Type of Admonishments

Along with general admonishments, the court shall also admonish the child of Texas Family Code §54.03(j). If a plea agreement is reached, the prosecutor shall inform the court of such and the court shall then admonish "the child that the court is not required to accept the agreement."

This allows the juvenile the right to withdraw a plea if the court does not accept the agreement.

Texas Family Code § 54.034

Requires the court to admonish the child that if the court accepts the plea or stipulation and the court makes the disposition in accordance with the agreement (regarding pleas entered pursuant to Texas Family Code § 54.03, 54.04, 54.05) the child may not appeal unless

1. The court grants permission or
2. The child is appealing the denial of a written pre-trial motion.

Texas Family Code § 56.01 (n) is the provision that Texas Family Code §54.034 is designed to admonish the child regarding this limited right to appeal.

I. No United States Constitutional Right to a jury trial in juvenile proceedings.

McKeiver v. Pennsylvania, 403 U.S. 528, 91 S. Ct. 1976, 29 L. Ed. 2d 647, (1971)

Held: A trial by jury is not constitutionally required in the adjudicative phase of a state juvenile court delinquency proceeding.

Additionally, the Court held "the States...may install a jury system." Id. at p. 547.

II. TEXAS CONSTITUTIONAL RIGHT TO A JURY TRIAL

Tex. Const. Art. I, § 15. "The Right of Trial by jury shall remain inviolate."

Jury Trials in Texas Juvenile Cases are authorized.

Adjudication Hearing:

Texas Family Code § 54.03(c) "Trial shall be by jury unless jury is waived in accordance with Section 51.09 of this code."

Query: Does the state have a right to a jury trial in juvenile cases: Answer: No  
Why not? Attorney General Opinion No, JC-0242,2000 WL875236, 2000.

Tex. Family Code § 51.17(a) Title 3 provisions supersede Civil Procedure provision when in conflict. Consequently, §54.03(c) guarantees the child a right to a jury trial unless the child waives this right pursuant to §51.09 of the Tex. Family Code.

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III. SIZE OF JURY/UNANIMOUS VERDICT REQUIREMENT

A. Texas Family Code §51.04(b) Juvenile Board designates the Juvenile Court. Thus, the number of jurors (6 or 12) depends upon the designation. Texas Constitution: Vernon's Ann. Tex. Const. Art. 5 § 13. "Grand and petit juries in the District Courts shall be composed of twelve men..."

B. Texas Family Code § 54.03(c) A Determinate Sentence trial (Texas Family Code §53.045) must consist of 12 persons. This is also true of Determinate Sentence cases in County Court (Texas Family Code § 51.045) "If a provision of this title requires a jury of 12 persons, that provision prevails over . . . law that limits the number...in a particular court at law."

Texas Family Code, Section § 54.03(c) to read as follows: (c) Trial shall be by jury unless jury is waived in accordance with Section § 51.09. Effective date, September 1, 2001 and applies only to a referral based upon conduct occurring on or after this date. If the hearing is a petition that has been approved by the grand jury under Section § 53.045, the jury must consist of 12 persons and be selected in accordance with the requirements in criminal cases. Jury verdicts under this title must be unanimous.

Interpretation: Jury selection in Determinate Sentencing cases must comply with Texas Code of Criminal Procedure, Chapter 35 and specifically Texas Code of Criminal Procedure Art. 35.15, seq.

C. County Court: Non-Determinate Cases Heard in County Courts consist of 6 jurors.  
In the Matter of A.N.M., 542 S.W. 2d 916 (Tex. Civ.-App.-Dallas 1996)

#### IV. Jury Strikes

##### A. PEREMPTORY CHALLENGES

Texas Rules of Civil Procedure, Rule 233:

Each party is entitled to 6 peremptory challenges (strikes) in District Court cases and 3 peremptory challenges (strikes) in County Court cases.

##### 1. PEREMPTORY CHALLENGES-DETERMINATE SENTENCING

Both Texas Family Code § 51.045 Juries in County Courts at Law and Texas Family Code § 53.045 Referral to Grand Jury (Determinate Sentence Act) were enacted September 1, 1987 (Acts 1987, 70<sup>th</sup> Legislature, Ch. 385) as a means of ensuring a jury of 12 even if the designated Juvenile Court is a County Court level. A basic principle of the Determinate Sentence Act was to provide a juvenile with the procedural rights enjoyed if this juvenile were transferred to Criminal Court and prosecuted for the same offenses as an adult.

Consequently, the reference to peremptory challenges must be read to refer to criminal cases in District Court (Texas Code of Criminal Procedure, Art. 33.01 and 33.15) Title 3, giving both the state and the juvenile 10 strikes. "Delinquent Children and Children In Need of Supervision," Robert O. Dawson 21 Tex. Tech. L. Re. 1762, 1806 (1990).

##### 2. PEREMPTORY CHALLENGES:

###### a. BATSON STRIKES

Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L. Ed. 2d 69 (1986)

The United States Supreme Court held that the Equal Protection Clause of the 14<sup>th</sup> Amendment forbids the prosecutor in a criminal prosecution from using peremptory challenges to exclude members of the defendant's race from the jury venire. If a defendant objects to the state's use of the peremptory challenge in a timely fashion, then the defendant may establish a Prima Facie Case of discrimination, by showing:

- (1) that he is a member of a cognizable racial group;
- (2) that the prosecutor has exercised peremptory challenges to remove members of the defendant's race from the venire; and
- (3) these facts and any other relevant circumstances raise an inference that the prosecutor used peremptory challenges to exclude the venire members on account of their race.

Once a Prima Facie Case is made, the burden shifts to the State to provide a racially neutral explanation for the challenge. Id. at 96-98.

##### 3. Application to Texas Delinquency Trials

###### a. C.E.J. v. State, 788 S.W. 2d 849 (Tex. App.-Dallas 1990, writ denied)

The Dallas Court of Appeals held that Batson does apply to a juvenile delinquency proceeding and that in the absence of legislation implementing the Batson decision in delinquency trials, the Dallas Court of Appeals adopted relevant provisions of Article 35.261 of the Code of Criminal Procedure as the standard of review in determining timeliness of a Batson motion in juvenile delinquency proceedings, as follows:

- (1) After the parties have delivered their lists to the clerk . . . and before the court has impaneled the jury, the appellant may request the court to dismiss the array and call a new array in the case...
- (2) If the court determines that the attorney representing the state challenged prospective jurors on the basis of race, the court shall call a new array in the case.

Id. at 852-53

4. EXPANSION OF BATSON:

- (1) Powers v. Ohio, 499 U.S. 400, 111 S. Ct. 1364, 113 L. Ed. 2d 411 (1991)  
The Supreme Court held that under the Equal Protection Clause of the 14<sup>th</sup> Amendment, a criminal defendant may object to race based exclusion of jurors through peremptory challenges whether or not the defendant and the excluded jurors share the same race.
- (2) Edmonson v. Lessville Concrete Co. Inc., 500 U.S. 614, 111 S. Ct. 2077, 114 L. Ed. 2d 660 (1991)  
The Supreme Court held that a private litigant in a civil case may not use peremptory challenges to exclude jurors on account of race.

Also, answered in this case, Batson applies not only to Determinate Sentencing cases, but all juvenile proceedings, as well as the restriction on a juvenile from making race based challenges to remove venire members.

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B. CHALLENGE FOR CAUSE:

Texas Government Code §62.105 Disqualification for particular Jury  
A person can be challenged for cause who could not remain an impartial juror in the case they were called to serve as a juror.

W.D.A. v. State, 835 S.W. 2d 227 (Tex. App.-Waco 1992)  
The Waco Court of Appeals held a juror should have been struck for cause when the juror related that the juvenile would not have been in court had he not done something wrong as a showing of his prejudice pursuant to §62.105(4).

V. BURDEN OF PROOF IN DELINQUENCY OR CONDUCT INDICATING A NEED FOR SUPERVISION

UNITED STATES CONSTITUTION

In re Winship, 397 U.S. 358, 90 Ct. 1068, 25 L. Ed.2d 368 (1970)  
The United States Supreme Court held that the Constitutional safeguard of proof Beyond a Reasonable Doubt is applicable in a juvenile delinquency proceeding.

Texas Authority:  
Texas Family Code § 54.03(f)...The child shall be presumed innocent of the charges against the child and no finding that a child has engaged in delinquent conduct or CINS may be returned unless the State has proved such Beyond a Reasonable Doubt.

Geesa v. State, 820 S.W.2d 154 (Tex. Crim. App. 1991)  
The Texas Court of Criminal Appeals expressly adopted the instruction "reasonable doubt: (820 S.W. 2d 162) and held that this instruction shall be submitted to the jury in all criminal cases, even in the absence of an objection or request by the State or the defendant whether the evidence be circumstantial or direct." Id. at 162.

Given § 54.03(f) requires proof beyond a reasonable doubt, as is required in criminal cases (Texas Penal Code §2.01), it appears reasonable to use the Geesa instruction in juvenile adjudications.

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Geesa overruled: Paulson v. State, 28 S.W. 3d 570 (Tex. Crim. App.2000)  
Held: We specifically overrule that portion of Geesa which requires trial courts to instruct juries on the definition of "beyond a reasonable doubt. We also overrule Reyes {938 S.W. 2d 718 (Tex.Crim. App. 1996)} in its entirety."

"We find the better practice is to give no definition of reasonable doubt at all to the jury."

“On the other hand, if both the state and the defense were to agree to give the Geesa instruction to the jury, it would not constitute reversible error for the trial court to acquiesce to their agreement.”

VI. VARIANCE: Texas Family Code §53.04(d)

The petition must state:

- A. With reasonable particularity: the time, place and manner of the acts alleged and the penal law or standard of conduct allegedly violated by the acts.
- B. A significant difference (variance) between what was charged and what is proved will result in an acquittal of the juvenile.

L.G.R. v. State, 724 S.W. 2d 775 (Tex. 1987)

The Supreme Court held that the State failed to prove its charges and set aside the delinquency adjudication.

In the Matter of D.D., 101 S.W. 3d 695 (Tex. App.-Austin 2003)

Cannot adjudicate for Terroristic Threat on a petition alleging retaliation because former is not a lesser included offense of the latter.

VII. LAW OF PARTIES

This theory need not be pled in a petition and a finding that a juvenile is delinquent as a party is not a variance. ROBERT O. DAWSON, TEXAS JUVENILE LAW (6<sup>th</sup> ED. 2004)

Texas Authority:

Texas Penal Code § 7.01(c) All traditional distinctions between accomplices and principals are abolished by this section and each party to an offense may be charged and convicted without alleging that he acted as a principal or accomplice.

VIII. LESSER INCLUDED OFFENSES

- A. Generally, these are implicitly charged offenses because every element of these offenses is included in elements of the greater charge. Code of Criminal Procedure, Article 37.09(1). Texas Authority: Texas Family Code §54.03(f) . . . A child may be adjudicated as having engaged in conduct constituting a lesser included offense as provided by Articles 37.08 and 37.09, Code of Criminal Procedure.
- B. If during a Determinate Sentence case, the judge or jury found the juvenile delinquent of a lesser included offense, not within the Determinate Statute, then the proceedings continue as if an ordinary delinquent case. If the lesser included offense is still within the act then the proceedings continue under Determinate Sentencing. ROBERT O. DAWSON, TEXAS JUVENILE LAW, (6<sup>th</sup> ED. 2004)

United States Constitution, 5<sup>th</sup> Amendment

Lesser Included offense and Double Jeopardy

Both the greater and lesser offenses are one in the same offense for Double Jeopardy purposes.

Consequently, the Double Jeopardy clause would be violated if the juvenile was adjudicated of both.

Remedy: Vacate the lesser offense and allow the greater offense to stand.

In the Matter of L.M., 993 S. W. 2d 276 (Tex. App.-Austin 1999)

IX. AFFIRMATIVE DEFENSES ARE APPLICABLE IN JUVENILE CASES

In the Matter of P.A.S., 566 S.W. 2d 14 (Tex. Civ. App.-Amarillo 1978)

Held that the juvenile has the burden of proving an affirmative defense by a preponderance of the evidence, as per Texas Penal Code § 2.04 and that the juvenile was unsuccessful in her affirmative action defense of duress (Texas Penal Code § 8.05) when there is ample evidence to support the court’s finding that she could have used this gun as a means of freeing herself from any demands or threats. An admission by appellant that she received a share of the money taken supported the State’s contention that she was not just an unwilling participant in the crime.

X. VENUE

- A. Texas Family Code §51.06(a) Venue in a juvenile proceeding is in the County in which the alleged delinquent conduct or prohibited conduct occurred (or) the County where the juvenile resides if:
  - 1. The child was on probation at the time of the alleged conduct (or)
  - 2. It is not known in which County the alleged conduct occurred (or)
  - 3. The juvenile's County of residence accepts in writing, prior to the transfer of the case for prosecution.
- B. Texas Code of Criminal Procedure Article 13.17:  
Venue can be proved by a preponderance of the evidence. Likely this provision is applicable in juvenile proceedings as well.

#### XI. ACCOMPLICE CORROBORATION

- A. Texas Family Code §54.03(e) . . . An adjudication of delinquent conduct or CINS cannot be had upon the testimony of an accomplice unless corroborated by other evidence tending to connect the juvenile with the alleged delinquent conduct or CINS; and the corroboration is not sufficient if it merely shows the commission of the alleged conduct.

In the Matter of J.A.F.R., 752 S.W. 2d 216 (Tex. App.-El Paso 1988)

For a discussion of who is an accomplice.

"An adjudication of delinquent conduct or conduct indicating a need for supervision cannot be had upon a testimony of an accomplice unless corroborated by other evidence tending to connect the child with the alleged delinquent conduct or conduct indicating a need for supervision . . ."

An undercover agent is not an accomplice so long as he does not bring about the crime but merely obtains evidence to be used against those engaged in crime.

Lopez v. State, 574 S.W. 2d 563, 565 (Tex. Crim. App. 1978)

"One is not an accomplice if he cannot be prosecuted for the offense charged."

- B. Jury Instruction:

The trial court must instruct the jury regarding the corroboration of such testimony.

Failure to give such an instruction is error regardless of whether or not the juvenile requested one. It may be harmless error if there is ample corroboration.

The requirement that the testimony of an accomplice must be corroborated applies only to the in-court testimony of an accomplice. It does not apply to an out-of-court statement of an accomplice that is admitted into evidence through the testimony of a non-accomplice. In the Matter of A.A.S., UNPUBLISHED, No. 04-97-00849-CV, 1999 Tex. App. Lexis 461 (Tex. App.-San Antonio 1999).

- C. Sufficiency of corroboration

In the Matter of A.D.L.C., 598 S. W. 2d 383 (Tex. Civ. App.-Amarillo 1980)

The Amarillo Court of Appeals discussion determined the corroborative evidence is sufficient if its cumulative weight tends to connect the accused to the crime. It is not necessary that the corroborative testimony link the accused directly to the crime or that it be sufficient in itself to establish guilt.

- D. Acquittal required if corroboration is insufficient

In the Matter of J.R.R., 696 S.W. 2d 382 (Tex. 1985)

The Texas Supreme Court held that if corroboration is insufficient, then the juvenile must be acquitted. Otherwise, the Double Jeopardy clause of the 5<sup>th</sup> Amendment is violated.

## XII. THE CORPUS DELICTI RULE

Texas Family Code §54.03(e)... a statement made by the child out of court is insufficient to support a finding of delinquent conduct or CINS unless it is corroborated in whole or in part by other evidence.

R.C.S. v. State, 546 S.W. 2d 939 (Tex. Civ. App.-San Antonio 1977)

Discussion and finding no evidence independent of Juvenile confession regarding the source of an arson.

Acquittal required if the Corpus Delicti corroboration is not shown.

## XIII. EVIDENCE

- A. Texas Family Code §54.03(d) ". . . Except in a detention or discretionary transfer hearing, a social history report or social service file shall not be viewed by the court before the adjudication decision and shall not be viewed by the jury at any time."

Rationale regarding judge-avoid providing additional information about the juvenile to the court.

- B. United States Constitution, 6<sup>th</sup> Amendment: Right to Confront Witness

In re: Gault, 387 U.S. 1, 18 L.Ed 2d 527, 87 S. Ct. 1428 (1967)

Held: 6<sup>th</sup> Amendment right of confrontation of witnesses applies in juvenile cases.

In the Matter of M.R.R., 2 S.W. 3d 319 (Tex. App.-San Antonio 1999)

An out-of-court statement of co-conspirator admitted into evidence by redacting a reference to juvenile may be considered by the jury unless the jury understands the redacted statement refers to the juvenile on trial.

In the Matter of L.A., UNPUBLISHED, No. 04-97-00434-CV, 1998 WL 904294, 1998 (Tex. App.Lexis 8016, Juvenile Law Newsletter 199-1-12)(Tex. App.-San Antonio 1998)  
(similar holding as companion case to M.R.R.)

- C. Rules of Evidence Applicable to Adjudication Hearing

1. Texas Family Code §54.03(d) . . . "only material, relevant, and competent evidence in accordance with the Texas Rules of Evidence applicable to criminal cases and Chapter 38, Code of Criminal Procedure, may be considered in the adjudication hearing."
2. Hearsay Statement of Child Victim: Article 38.071 of the Code of Criminal Procedure allows several ways to ease the trauma of testifying for a child victim

such as traditional setting; or video tape interview by a child protective service worker.

SEE: In the Matter of D.T.C., 30 S.W. 3d 43 (Tex.App.-Houston(14th District)2000)

3. The comparable rule in the Texas Family Code is §54.031 which allows under limited circumstances, the "outcry" statements of a victim age 12 or younger to the first person age 18 or older regarding the violation to be admitted into evidence against a claim of hearsay.

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- a. Who really was the first out-cry witness?

The Texas Supreme Court dealt with this issue:

"We must decide who bears the burden to produce evidence of an earlier statement when the defendant claims that the prosecution's proffered outcry witness was not the defendant "first person" to whom a sufficient statement was made...We hold that once the prosecution has laid the initial predicate to establish an outcry witness, the burden shifts to the defendant to prove that the child made an earlier statement to another individual."

In the Matter of Z.L.B., 102 S.W.3d 120 (Tex.2003)

4. Impeaching testimony of a party-witness with juvenile adjudication in a juvenile proceeding, pursuant to Rule 609(d) of the Texas Rules of Evidence is authorized. "Evidence of juvenile adjudications is not admissible, except for proceedings conducted pursuant to Title III, Family Code, in which the witness is a party" {as defined by Texas Family Code §51.01(10)} "under this rule unless required to be admitted by the Constitution of the United States."

D. Pretrial Photographic Identification Procedures

These are the same for juveniles and adults (i.e., no right to counsel, the array of the photographs must be fair as not to suggest who the juvenile is to the identifying witness).

- E. Texas Family Code §51.17(c) Except as otherwise provided by this title, the Texas Rules of Evidence applicable to criminal cases and Chapter 38, Code of Criminal Procedure apply in judicial proceedings under this title.

- F. Essentially, Texas Family Code §54.03(e) provides 3 special evidentiary rules that supersede the Texas Rules of Evidence or Chapter 38 of the Code of Criminal Procedure, in the event of a conflict:

1. 5<sup>th</sup> Amendment to the United States Constitution:  
Privilege Against Self-Incrimination held to be applicable in juvenile proceedings.

In Re Gault, 387 U.S.1, 18 L. Ed, 2d 527, 87 S. Ct. 1428 (1976)

Texas Family Code §54.03(e) "a child alleged to have engaged in delinquent conduct or CINS need not be a witness against nor otherwise incriminate himself."

2. Illegal Confession

Texas Family Code §54.03(e) . . . An extrajudicial statement that was obtained without fulfilling the requirements of this title (Texas Family Code §51.095 and §52.02) or of the Constitution of this state or the United States, may not be used in an adjudication hearing.

3. Illegally Seized Evidence

Texas Family Code §54.03(e) Evidence illegally seized or obtained is inadmissible in an adjudication hearing.



## EXHIBIT "A"

This is Cause No. \_\_\_\_\_

In the Matter of \_\_\_\_\_

You are \_\_\_\_\_ and your date of birth is \_\_\_\_\_.  
Is that correct?

Before we get started, I'd like to get everyone to state their name for the court record, beginning with \_\_\_\_\_.

The State of Texas has charged you with (an) offense(s) in which they are alleging that you are a child who has engaged in Delinquent Conduct. You need to understand that the nature of this proceeding is to determine whether or not you are a child who has engaged in Delinquent Conduct.

Possible consequences of this hearing include the following:

- A. Commitment to the Texas Youth Commission where they are authorized by law to keep you until your 21<sup>st</sup> birthday.
- B. Placed on probation at a placement facility outside of your home where you could be kept until as late as your 18<sup>th</sup> birthday, or
- C. Placement on probation with your parents for a period of time until, at the latest, your 18<sup>th</sup> birthday.

### RIGHTS

You have the right to remain silent and not make any statements concerning any or all of the offenses with which you stand charged. If you give up your right to remain silent and admit any or all of the offenses, you will be declared delinquent.

You have the right to be represented by an attorney.

You have the right to confront witnesses and bring witnesses on your own behalf.

You have the right to at least 2 days notice of all matters contained in the State's petition and your attorney has the right to at least 10 days notice.

You have the right to a trial by jury in the adjudication phase of a trial (but not for a Motion to Modify).

You have the right to have this hearing before a District Court Judge - You need to understand that I am not the District Court Judge, I am an Associate/Master /Visiting Judge in this court.

You need to know that the law in Texas currently is that a Juvenile Court adjudication is admissible in a subsequent court proceeding as evidence in the punishment phase of a trial. What this means to you is, that an adjudication (finding of true) in this court will give you a record that can follow you for a lifetime.

(Drug Offense) A finding of true will result in the loss of your driver's license or the right to get one if you don't yet have your driver's license.

Do you understand all these rights and explanations?

Your attorney has tendered to me a document titled...(Review Waiver)

Do you waive your right to a TBJ (Trial by Judge), the right to remain silent and the right to confront the State's witnesses and to bring witnesses favorable to your Defense?

Do you agree to all trial amendments agreed to by your attorney and waive your right to 2 days notice?

Do you waive your right to have this hearing before the District Court Judge, and do you wish to proceed today before me, the Associate/Master/Visiting Judge?

(Ask parent and attorney if they join child in his waivers).

### **SWEAR IN WITNESSES**

Do you swear that in all matters before the Court you will tell the truth, the whole truth, and nothing but the truth, so help you God?

Read count 1, etc.

Do you understand the offense for which you stand charged in count \_\_?

How do you plead to this offense brought against you in count \_\_, true or not true?

If true . . . did anyone promise you anything or force you in anyway to plead true to any of these charges? Are you pleading true because it is true and for no other reason?

Court accepts respondent's plea of true. Enter finding of true.

Does the State rest? Respondent?

Based on the pleadings on file, the record which reflects that this juvenile is properly before the court, the juvenile's plea of true and the court's finding of true, I hereby find that \_\_\_\_\_ is a child who has engaged in Delinquent Conduct or Conduct in Need of Supervision (CINS).

### **CLOSE ADJUDICATION**

Ready to proceed to disposition? You have the right to appeal the finding of the court, to have an attorney represent you in the appeal and to have an attorney appointed by the court to represent you if you or your family are not able to hire an attorney.

### **DISPOSITION**

The court finds that the juvenile is in need of rehabilitation and is in need of protection and that the public is in need of protection. As a result of this findings I hereby make the following disposition in this matter:

PROBATION- go over the Terms and Conditions

PROBATION WITH PLACEMENT OR COMMITMENT TO TYC

Make additional findings as follows:

The child, in the child's home, cannot be provided the quality of care and level of support and supervision that the child needs to meet the conditions of probation. I find the following disposition is the least restrictive alternative and is in the best interest of the child.

If commit to TYC § 54.04(i)

Must find:

- 1) best interest of the respondent to be placed outside home
- 2) reasonable efforts made to prevent respondent's removal from home
- 3) child, in home, cannot be provided the quality of care and level of support and supervision needed to meet his Terms and Conditions of probation.