

Age Limits in the Juvenile Justice System, Criminal Violations, Delinquent Conduct and Conduct Indicating a Need for Supervision



Speaker Information

Joel Baker received his Doctor of Jurisprudence degree from South Texas College of Law in 1995, and he began his legal career with the Tyler law firm of Perkins & Hawk, P.C. In 1998 he became the lead juvenile prosecutor for the Smith County District Attorney's office and moved into private practice by starting his own law firm in 2000 with a concentration in criminal and juvenile defense. In December 2002, Joel received his board certification in juvenile law. He is a member of the Christian Legal Society and currently serves as Vice-President of the Smith County Criminal Defense Lawyers' Association and as Vice-President of the Tyler-Smith County Juvenile Attention Center Foundation, Inc. Joel and his wife, Melanie, are the proud parents of a son, Coleman, and daughter, Mallory, and are expecting their third child later this year.

Contact Information

Joel Baker
414 South Broadway Avenue
Tyler, Texas 75702
Telephone 903.533. 9000
E-Mail joel@thebakerfirm.com

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AGE LIMITS IN THE JUVENILE JUSTICE SYSTEM

Chapter 51 - General Provisions

Juvenile Court Jurisdiction (F.C. §51.04(a)). Title 3 of the Family Code covers the proceedings in all cases involving the delinquent conduct or conduct indicating a need for supervision engaged in by a person who was a child within the meaning of this title at the time the person engaged in the conduct, and the juvenile court has exclusive original jurisdiction over proceedings under this title.

Exception (F.C. §51.04(h)). In county with a population of less than 100,000, the juvenile court has concurrent jurisdiction with the justice and municipal courts over conduct engaged in by a child that violates Section 25.094 of the Education Code.

Definition of a Child (F.C. §51.02(2)). A "child" is a person who is:

- (1) ten years of age or older and under 17 years of age; or
- (2) seventeen 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.

Jurisdictional Challenge Due to Child's Age (F.C. §51.042).

- (1) A child who objects to the jurisdiction of the court over the child because of the age of the child must raise the objection at the adjudication hearing or discretionary transfer hearing, if any.
- (2) A child who does not object as provided above waives any right to object to the jurisdiction of the court because of the age of the child at a later hearing or on appeal.

Pursuant to CCP Art. 4.18, in criminal court, a claim that the court does not have jurisdiction over a person because jurisdiction is exclusively in the juvenile court and that the juvenile court could not or did not waive jurisdiction under §8.07(a) or (b) of the Penal Code must be made by written motion in bar of prosecution:

- (1) if person pleads guilty, motion must be filed before the plea;
- (2) if defendant guilty or punishment is determined by a jury, motion must be filed before jury selection begins; or
- (3) if defendant's guilt is tried by the court, motion must be filed before the first witness is sworn.

Jurisdiction After Appeal (F.C. §51.041).

- (1) (The following applies to appeals under Family Code §56.01 of orders by juvenile courts rendered on or after Sept. 1, 2003.) The court retains jurisdiction over a person, without regard to the age of the person, for conduct engaged in by the person before becoming 17 years of age if, as a result of an appeal by the person or the state under Chapter 56 or by the person under Article 44.47, Code of Criminal Procedure, of an order of the court, the order is reversed or modified and the case remanded to the court by the appellate court.
- (2) If the respondent is at least 18 years of age when the order of remand from the appellate court is received by the juvenile court, the juvenile court shall proceed as provided by Sections 54.02(o) through (r) for the detention of a person at least 18 years of age in discretionary transfer proceedings. Pending retrial of the adjudication or transfer proceeding, the juvenile court may:
 - (A) order the respondent released from custody;
 - (B) order the respondent detained in a juvenile detention facility; or
 - (C) set bond and order the respondent detained in a county adult facility if bond is not made.

Jurisdiction for Transfer or Release Hearing (F.C. §51.0411). The court retains jurisdiction over a person, without regard to the age of the person, who is referred to the court under Family Code Section 54.11 for transfer to the Texas Department of Criminal Justice or release under supervision.

Pursuant to Family Code §54.11(l), pending the conclusion of a transfer hearing, a person referred for transfer who is at least 17 years of age may be detained without bond in the appropriate county facility for the detention of adults accused of criminal offenses by order of the juvenile court.

Jurisdiction Over Incomplete Proceedings (F.C. §51.0412). The court retains jurisdiction over a person, without regard to the age of the person, who is a respondent in an adjudication proceeding, a disposition proceeding, or a proceeding to modify disposition if:

- (1) the petition or motion to modify was filed *while the respondent was younger than 18 years of age*;
- (2) the proceeding is not complete *before the respondent becomes 18 years of age*; and
- (3) 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 years of age.

Ch. 53 - Proceedings Prior to Judicial Proceedings

Preliminary Investigation & Determinations (F.C. §53.01(a)(1)). On referral of a person believed to be a child or on referral of the person's case to the office or official designated by the juvenile board, the intake officer, probation officer, or other authorized person shall conduct a preliminary investigation to determine whether the person referred to juvenile court is a child.

Chapter 54 - Judicial Proceedings

Waiver of Jurisdiction & Discretionary Transfer to Criminal Court (F.C. §54.02).

F.C. §54.02(a): The 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:

- (1) the child is alleged to have violated a penal law of the grade of felony;
- (2) the child was:
 - (A) 14 years of age or older at the time he is alleged to have committed the offense, if the offense is a capital felony, an aggravated controlled substance felony, or a felony of the first degree, and no adjudication hearing has been conducted concerning that offense; or
 - (B) 15 years of age or older at the time the child is alleged to have committed the offense, if the offense is a felony of the second or third degree or a state jail felony, and no adjudication hearing has been conducted concerning that offense; and
- (3) after a full investigation and a hearing, the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged and that because of the seriousness of the offense alleged or the background of the child the welfare of the community requires criminal proceedings.

F.C. §54.02(j): The juvenile court may waive its exclusive original jurisdiction and transfer a person to the appropriate district court or criminal district court for criminal proceedings if:

- (1) the person is 18 years of age or older;
- (2) the person was:
 - (A) 10 years of age or older and under 17 years of age at the time the person is alleged to have committed a capital felony or an offense under Section 19.02, Penal Code (Murder);
 - (B) 14 years of age or older and under 17 years of age at the time the person is alleged to have committed an aggravated controlled substance felony or a felony of the first degree other than an offense under Section 19.02, Penal Code (Murder); or

- (C) 15 years of age or older and under 17 years of age at the time the person is alleged to have committed a felony of the second or third degree or a state jail felony;
- (3) no adjudication concerning the alleged offense has been made or no adjudication hearing concerning the offense has been conducted;
- (4) the juvenile court finds from a preponderance of the evidence that:
 - (A) for a reason beyond the control of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person; or
 - (B) after due diligence of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person because:
 - (i) the state did not have probable cause to proceed in juvenile court and new evidence has been found since the 18th birthday of the person;
 - (ii) the person could not be found; or
 - (iii) a previous transfer order was reversed by an appellate court or set aside by a district court; and
- (5) the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged.

TYC Commitments (F.C. §54.04(e)). The Texas Youth Commission shall accept a person properly committed to it by a juvenile court even though the person may be 17 years of age or older at the time of commitment. Pursuant to Human Resources Code §61.084(e), a child serving an indeterminate TYC commitment who has not already been discharged from custody must be discharged on the person's 21st birthday.

Maximum Age for Juvenile Court Probation (F.C. §54.04(l)). A child may be placed on probation for any period, except that probation may not continue on or after the child's 18th birthday. (See F.C. §54.04(q) for Determinate Sentence Probation).

Determinate Sentence Probation Deadlines (F.C. §54.04(q)). The court may, before a child's 18th birthday, discharge the child from the sentence of probation. If a sentence of probation ordered under this subsection and any extension of probation ordered under F.C. §54.05 will continue after the child's 18th birthday, the court shall discharge the child from the sentence of probation on the child's 18th birthday unless the court transfers the child to an appropriate district court under F.C. §54.051.

Payment of Restitution (F.C. §54.041(b)). A child or a parent may be ordered to pay restitution under certain circumstances. An order under this section may provide for the periodic payment by the child or a parent of the child for the period specified in the order but that period may not extend past the date of the 18th birthday of the child or past the date the child is no longer enrolled in an accredited secondary school in a program leading to a high school diploma, whichever date is later. This rule does not apply to determinate sentence probation.

Payment of Restitution for Determinate Sentence Probation (F.C. §54.041(h)). If the juvenile court places the child on determinate sentence probation and transfers supervision on the child's 18th birthday to a district court for placement on community supervision, the district court shall require the payment of any unpaid restitution as a condition of the community supervision for the child.

Modification Hearings (F.C. §54.05(a)(1)).

- (1) Any disposition, except a commitment to the Texas Youth Commission, may be modified by the juvenile court until:
 - (a) the child reaches his 18th birthday; or
 - (b) the child is earlier discharged by the court or operation of law.

Dispositions Terminate (F.C. §54.05(b)). Except for a commitment to the Texas Youth Commission, all dispositions automatically terminate when the child reaches his 18th birthday.

Transfer of Determinate Sentence Probation to Appropriate District Court (F.C. §54.051).

- (1) On motion of the State concerning a child who is placed on determinate sentence probation for a period that will continue after the child's 18th birthday, 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. F.C. §54.051(a)
- (2) Such a motion must be conducted before the child's 18th birthday. F.C. §54.051(b)
- (3) If, after a hearing, the court decides to discharge the child's probation, the court must specify a date on or before the child's 18th birthday for the probation to be discharged. F.C. §54.051(c)
- (4) If, after a hearing, the court decides to transfer the child to an appropriate district court, the transfer occurs on the child's 18th birthday, and the child is placed on community supervision under CCP Art. 42.12 for the remainder of the child's probationary term under conditions consistent with those ordered by the juvenile court. CCP Art. 42.12 §3g restrictions do not apply to these transferred cases, nor do minimum supervision periods imposed by CCP Art. 42.12 §3(b). F.C. §54.051(d), (e) and (e-1)
- (5) If a child on adult community supervision violates a condition of that supervision, or if the child violated a condition while on determinate sentence probation in the juvenile system and the violation was not discovered by the state before the child's 18th birthday, the district court shall dispose of the violation in the same manner as if the court had originally exercised jurisdiction over the case.

Public Access to Court Hearings (F.C. §54.08(C)). If a child is under the age of 14 at the time of the hearing, the court shall close the hearing to the public unless the court finds that the interests of the child or the interests of the public would be better served by opening the hearing to the public.

Release or Transfer Hearing (F.C. §54.11). Pursuant to Human Resources Code §61.079, a child serving a determinate sentence in TYC who has reached age 16 but before the child becomes 21 years of age can be referred to the juvenile court by the TYC for approval of the child's transfer to the institutional division of the Texas Department of Criminal Justice under certain circumstances.

Ch. 55 - Proceedings Concerning Children with Mental Illness or Mental Retardation

Expiration of Mental Health Services (F.C. §55.15(1)). A court order for mental health services for a child automatically expires on the 120th day after the date the child becomes 18 years of age.

Discharge from Mental Health Facility Before Reaching 18 Years of Age (F.C. §55.18). If the child is discharged from the mental health facility before reaching 18 years of age, the juvenile court may:

- (1) dismiss the juvenile court proceedings with prejudice; or
- (2) continue with proceedings under Title 3 as though no order of mental health services had been made.

Transfer to Criminal Court on 18th Birthday (F.C. §55.19). The juvenile court shall transfer all pending proceedings from the juvenile court to a criminal court on the 18th birthday of inpatient juveniles who are alleged to have engaged in delinquent conduct listed under the violent or habitual offenders statute (F.C. §53.045) whose cases have not been adjudicated and who have not been discharged or furloughed before reaching 18 years of age.

Restoration Hearing (F.C. §55.43). The prosecuting attorney may file with the juvenile court a motion for a restoration hearing concerning a child if:

- (1) the child is found unfit to proceed as a result of mental illness or mental retardation; and
- (2) the child:
 - (A) is not:
 - (i) ordered by a court to receive inpatient mental health services;
 - (ii) committed by a court to a residential care facility; or
 - (iii) ordered by a court to receive treatment on an outpatient basis; or

- (B) is discharged or furloughed from a mental health facility or outpatient center before the child reaches 18 years of age.

Transfer to Criminal Court on 18th Birthday of Child (F.C. §55.44). The juvenile court shall transfer all pending proceedings from the juvenile court to a criminal court on the 18th birthday of a child ordered to inpatient mental health services or residential care for persons with mental retardation if the child has not been discharged or furloughed before reaching 18 years of age the child is alleged to have engaged in delinquent conduct listed under the violent or habitual offenders statute (F.C. §53.045) and the case has not been adjudicated .

Chapter 58 - Juvenile Information & Records

Sealing of Records - Mandatory for Misdemeanor and CINS (F.C. §58.003(a)). Without regard to age, and except as provided by F.C. §58.003(b) and (c), on the application of a person who has been found to have engaged in delinquent conduct or conduct indicating a need for supervision, or a person taken into custody to determine whether the person engaged in delinquent conduct or conduct indicating a need for supervision, on the juvenile court's own motion or on receipt of a certification from the Texas Dept. of Public Safety that the records of a person are eligible for sealing under this section, the court shall order the sealing of the records in the case if the court finds that:

- (1) two years have elapsed since final discharge of the person or since the last official action in the person's case if there was no adjudication; and
- (2) since the time specified above, the person has not been convicted of a felony or a misdemeanor involving moral turpitude or found to have engaged in delinquent conduct or conduct indicating a need for supervision and no proceeding is pending seeking conviction or adjudication.

Sealing of Records - Impermissible for Determinate Sentence (F.C. §58.003(b)). Without regard to age, a court may not order the sealing of records for a person who has received a determinate sentence for engaging in conduct that violated a penal law listed in F.C. §53.045 or engaging in habitual felony conduct as described by F.C. §51.031.

Sealing of Records - Discretionary for Felony (F.C. §58.003(c)). Subject to F.C. §58.003(b), a court may order the sealing of records concerning a person adjudicated as having engaged in delinquent conduct that violated a penal law of the grade of felony only if:

- (1) the person is 21 years of age or older;
- (2) the person was not transferred to criminal court;
- (3) the records have not been used as evidence in the punishment phase of a criminal proceeding under CCP Art. 37.07 §3(a); and
- (4) the person has not been convicted of a penal law of the grade of felony after becoming age 17.

Destruction of Records - Discretionary for Status / Class C (F.C. §58.003(c)). On the motion of a person in whose name records are kept or on the court's own motion, the court may order the destruction of records that have been sealed under F.C. §58.003 if:

- (1) the records relate to conduct that did not violate a penal law of the grade of felony or a misdemeanor punishable by confinement in jail;
- (2) five years have elapsed since the person's 16th birthday (i.e., the person must be at least 21 years of age); and
- (3) the person has not been convicted of a felony.

Destruction of Records for CINS Referrals or Non-offenses (F.C. §58.0071(d)(1)). The physical files and records of a CINS or delinquent conduct referral may only be destroyed if the child who is the respondent is at least 18 years of age and:

- (1) whose most serious allegation adjudicated or unadjudicated was CINS; or
- (2) the referral or information did not relate to CINS or delinquent conduct and the juvenile court or the court's staff did not take action on the referral or information for that reason.

Destruction of Records for Misdemeanor or Unadjudicated Felony (F.C. §58.0071(d)(2)). The physical files and records of a CINS or delinquent conduct referral may only be destroyed if the child who is the respondent is at least 21 years of age and:

- (1) the most serious allegation adjudicated was delinquent conduct that violated a penal law of the grade of misdemeanor; or
- (2) the most serious allegation was delinquent conduct that violated a penal law of the grade of misdemeanor or felony and there was not an adjudication.

Destruction of Records for Felony (F.C. §58.0071(d)(3)). The physical files and records of a CINS or delinquent conduct referral may only be destroyed if the child who is the respondent is at least 31 years of age and the most serious allegation adjudicated was delinquent conduct that violated a penal law of the grade of felony.

Automatic Restriction of Access - Certification (F.C. §58.203). The department shall certify to the juvenile court or the juvenile probation department to which a referral was made that resulted in information being submitted to the juvenile justice information system that the records relating to a person's juvenile case are subject to automatic restriction of access if:

- (1) the person is at least 21 years of age;
- (2) the juvenile case did not include violent or habitual felony conduct resulting in proceedings in the juvenile court under Section 53.045;
- (3) the juvenile case was not certified for trial in criminal court under Section 54.02; and
- (4) the department has not received a report in its criminal history system that the person was granted deferred adjudication for or convicted of a felony or a misdemeanor punishable by confinement in jail for an offense committed after the person became 17 years of age.

Exception (F.C. §58.202): Sex offender registration records and records relating to a criminal combination or criminal street gang.

CRIMINAL VIOLATIONS, DELINQUENT CONDUCT AND CINS

The categorization of a "child's" actions as "criminal" or as "delinquent conduct" or as "child in need of supervision" determines which court has jurisdiction and also determines dispositional limits. If a court without jurisdiction enters an order, the order is void.

Tex. Penal Code § 8.07. Age Affecting Criminal Responsibility

- (a) A person may not be prosecuted for or convicted of any offense that the person committed when younger than 15 years of age except:
- (1) perjury and aggravated perjury when it appears by proof that the person had sufficient discretion to understand the nature and obligation of an oath;
 - (2) a violation of a penal statute cognizable under Chapter 729, Transportation Code, except for:
 - (A) an offense under Section 521.457, Transportation Code;
 - (B) an offense under Section 550.021, Transportation Code;
 - (C) an offense punishable as a Class B misdemeanor under Section 550.022, Transportation Code;
 - (D) an offense punishable as a Class B misdemeanor under Section 550.024, Transportation Code; or
 - (E) an offense punishable as a Class B misdemeanor under Section 550.025, Transportation Code;
 - (3) a violation of a motor vehicle traffic ordinance of an incorporated city or town in this state;
 - (4) a misdemeanor punishable by fine only other than public intoxication;
 - (5) a violation of a penal ordinance of a political subdivision;
 - (6) a violation of a penal statute that is, or is a lesser included offense of, a capital felony, an aggravated controlled substance felony, or a felony of the first degree for which the person is transferred to the court under Section 54.02, Family Code, for prosecution if the person committed the offense when 14 years of age or older; or
 - (7) a capital felony or an offense under Section 19.02 for which the person is transferred to the court under Section 54.02(j)(2)(A), Family Code.
- (b) Unless the juvenile court waives jurisdiction under Section 54.02, Family Code, and certifies the individual for criminal prosecution or the juvenile court has previously waived jurisdiction under that section and certified the individual for criminal prosecution, a person may not be prosecuted for or convicted of any offense committed before reaching 17 years of age except an offense described by Subsections (a)(1)-(5).
- (c) No person may, in any case, be punished by death for an offense committed while he was younger than 17 years.

Tex. Fam. Code § 51.03. Delinquent Conduct; Conduct Indicating a Need for Supervision.

- (a) Delinquent conduct is:
- (1) conduct, other than a traffic offense, that violates a penal law of this state or of the United States punishable by imprisonment or by confinement in jail;
 - (2) conduct that violates a lawful order of a court under circumstances that would constitute contempt of that court in:
 - (A) a justice or municipal court; or
 - (B) a county court for conduct punishable only by a fine;
 - (3) conduct that violates Section 49.04, 49.05, 49.06, 49.07, or 49.08, Penal Code; or
 - (4) conduct that violates Section 106.041, Alcoholic Beverage Code, relating to driving under the influence of alcohol by a minor (third or subsequent offense).
- (b) Conduct indicating a need for supervision is:

- (1) subject to Subsection (f), conduct, other than a traffic offense, that violates:
 - (A) the penal laws of this state of the grade of misdemeanor that are punishable by fine only; or
 - (B) the penal ordinances of any political subdivision of this state;
 - (2) the absence of a child on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period from school;
 - (3) the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return;
 - (4) conduct prohibited by city ordinance or by state law involving the inhalation of the fumes or vapors of paint and other protective coatings or glue and other adhesives and the volatile chemicals itemized in Section 484.002, Health and Safety Code;
 - (5) an act that violates a school district's previously communicated written standards of student conduct for which the child has been expelled under Section 37.007(c), Education Code; or
 - (6) conduct that violates a reasonable and lawful order of a court entered under Section 264.305.
- (c) Nothing in this title prevents criminal proceedings against a child for perjury.
- (d) It is an affirmative defense to an allegation of conduct under Subsection (b)(2) that one or more of the absences required to be proven under that subsection have been excused by a school official or should be excused by the court or that one of the absences was involuntary. The burden is on the respondent to show by a preponderance of the evidence that the absence has been or should be excused or that the absence was involuntary. A decision by the court to excuse an absence for purposes of this subsection does not affect the ability of the school district to determine whether to excuse the absence for another purpose.
- (e) For the purposes of Subsection (b)(3), "child" does not include a person who is married, divorced, or widowed.
- (f) Except as provided by Subsection (g), conduct described under Subsection (b)(1), other than conduct that violates Section 49.02, Penal Code, prohibiting public intoxication, does not constitute conduct indicating a need for supervision unless the child has been referred to the juvenile court under Section 51.08(b).
- (g) In a county with a population of less than 100,000, conduct described by Subsection (b)(1)(A) that violates Section 25.094, Education Code, is conduct indicating a need for supervision.

I. CRIMINAL COURT JURISDICTION OF 'CHILD'S' CONDUCT.

Youthful matters in criminal courts are not confidential. There are some specialized expunction procedures. Title 3, Juvenile Justice Code does not apply in criminal court.

A. District Court; felonies

- (1) Those matters transferred from juvenile court; child certified to stand trial as adult.
- (2) Aggravated perjury. P.C. § 37.03, F.C. § 51.03 (c)
 "nothing...prevents criminal proceedings..."
 AG Opinion No. DM-461. Jurisdiction concurrent with juvenile court.
- (3) If a determinate sentence probationer is transferred to criminal/district court supervision, the Juvenile Justice Code controls

B. Statutory County Court; jailable misdemeanors

- (1) Appeals of Class C matters
- (2) Perjury. P.C. § 37.02, F.C. § 51.03 (c)
AG Opinion No. DM-461. Jurisdiction concurrent with juvenile court.

C. Justice of the Peace/Municipal Courts

- (1) City ordinances, including traffic ordinances, curfews
- (2) Transportation Code violations that are "traffic offenses" are not delinquent conduct and not CINS.

F.C. § 51.03 (a) (1) and (b) (1) exclude traffic offenses from delinquent conduct or C.I.N.S.;

P.C. § 8.07 allows prosecution and conviction for "traffic offenses";

Trans. C. § 729.003 (g) assigns traffic offenses to criminal courts and excludes juvenile courts. Traffic offenses are not transferable to juvenile court.

Includes:

- (A) Failure to stop and render aid without personal injury, but with property damage under \$200. Trans. C. § 550.022
 - (B) Failure to stop and render aid without personal injury, unattended vehicle; property damage under \$200. Trans. C. § 550.024
 - (C) Reckless driving. Trans. C. § 545.401
- (3) Penal Code violations with fine only penalty, Class C, including:
 - (A) P.C. § 38.151, taunting police animal
 - (B) P.C. § 42.13, pointing laser light at specified workers
 - (C) P.C. § 49.031, open container
 - (4) Alcoholic Beverage Code.

Especially Chapter 106 purchase, attempt to purchase, consumption, possession.

1st and 2nd DUI for "any detectable amount."

DUI is not a lesser included of DWI. ABC § 106.041.
 - (5) Education Code

Failure to attend school. E.C. § 25.094

K – 18 years
 - (6) Family Code

Truancy cases transferred annually from juvenile court to lower courts.

F.C. § 54.021

The cases are filed in the justice of the peace or municipal courts as the court of origin. Even if destined to be transferred to juvenile court, the court of origin/filing is still the lower court. Traffic matters can not be transferred to juvenile court, nor do traffic matters count as a "conviction" for purposes of an optional or mandatory transfer to juvenile court. Traffic matters can only be appealed as in criminal cases.

Transfer from a lower court to juvenile court is possible if:

- (1) Prior to 1987 – 3rd violation became CINS. No criminal court or juvenile court involvement in 1st and 2nd offenses.
- (2) 1987 to 1989 – Lower court jurisdiction over 1st and 2nd offense. 3rd offense could be transferred to juvenile court or kept in lower court.
- (3) 1989 to 1991 – Public intoxication became CINS. Otherwise, reverted to prior to 1987; i.e. no court involvement in 1st or 2nd offense.
- (4) 1991 – Lower court jurisdiction over 1st and 2nd offense. Mandatory transfer to juvenile court upon filing 3rd offense (i.e. 2 prior "convictions"). F.C. § 51.08 (b)

Optional transfer of even the first fine only offense, including failure to attend school but not including traffic matters or public intoxication.

F.C. § 51.08 (b)(2)

Teen Court, CCP art. 45.051, is deferred adjudication not "conviction."

- (5) September 1, 2001. A lower court with a juvenile case manager is not obligated to transfer the 3rd offense to juvenile court. F.C. § 51.08 (d), CCP art. 45.054

II. JUVENILE COURT JURISDICTION

Conduct cannot be both CINS and delinquent conduct.

A. Child in Need of Supervision (CINS)

Some conduct is within the jurisdiction of a juvenile court merely because of status as a "child" or because of the need for intervention/prevention.

- (1) 3rd fine-only allegation (i.e. 2 prior convictions)
(September 2001: unless lower court has juvenile case manager)
- (2) Truancy. F.C. § 51.03 (b) (2)
 - 1987 Unless "child" is married/divorced/widowed
 - 1991 F.C. § 54.021. Truancy can be transferred from juvenile court to J.P. annually for original filing with J.P.
 - 1995 Truancy can also be transferred to municipal court annually
 - 3rd offense (i.e. 2 prior convictions) must be referred to juvenile court
 - 2001 Defense of "married, divorced or widowed" eliminated.
 - NOTE: The married/divorced/widowed defense never applied to Education Code § 25.094, failure to attend school.
- (3) Running away from home. F.C. § 51.03 (b) (3) unless "child" is married/divorced/widowed. "Substantial length of time" is flexible.
- (4) Huffing paint and glue...and volatile chemicals. F.C. § 51.03 (b) (4). Health and Safety Code § 484.002. This is CINS despite being jailable misdemeanor for adults.
- (5) Public Intoxication. F.C. § 51.03 (b) (1) since 1989.
- (6) Expulsion (Violation of Student Code of Conduct). F.C. § 51.03 (b) (5). Must be for previously communicated, written standards of conduct. See also Education Code § 37.007 (c) for "serious and persistent" misbehavior in the school districts' own Alternative Education Programs.

- (7) Violations of a child-at-risk court order. F.C. § 51.03 (b) (6). Under F.C. § 264.305 TDPRS can request a district court order for family members of any at risk young person. If a "child" violates the order, the violation is referred to juvenile court.

B. Delinquent Conduct

- (1) Penal code violations that areailable misdemeanors or felonies F.C. § 51.03 (a). Since 1993 includes both Texas and Federal penal codes. Includes perjury.
- (2) Contempt of a J.P. or municipal court order. 1995, F.C. § 51.03 (a) (3). The lower court must not "find" contempt but refer the conduct that would amount to contempt to the juvenile court. 1999, lower court has the option of referring the contempt to juvenile court or entering a finding of contempt assigning appropriate statutory consequence.
- (3) DUI – driving under the influence of any amount of alcohol, 3rd offense. F.C. § 51.03 (a) (5). ABC § 106.041
- (4) DWI F.C. § 51.03 (a) (4). Driving, boating, flying, etc. while intoxicated. Until 1997, 1st and 2nd offenses were CINS. In 1997, even the 1st offense is delinquent conduct.
- (5) Transportation Code § 550.021, 550.023, 550.024 for failure to stop and render aid for personal injury or property damage of \$200 or more.
- (6) Transportation Code § 545.420 drag racing can be Class "B" up to felony.
- (7) Transportation Code § 521.457 for driving while license invalid.
- (8) Transportation Code § 550.025 for duty on striking fixture or highway landscaping if damage is \$200 +.

C. Probation Violation

Probation Violations after September 2001 are not delinquent conduct.

F.C. § 51.03 (a) (2) Violations of adjudication and modification orders do not count as a "strike" toward eligibility for TYC. Probation violations can result in commitment to TYC if the child was eligible for TYC at the original adjudication.