

Age Limits for Juvenile Law

Maneuvering through the labyrinth of the juvenile justice system begins with a discussion of age limits. A child is defined as “a person who is ten years of age or older and under seventeen years of age; or seventeen years of age or older and under eighteen 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 seventeen years of age.”¹ Other significant ages are fourteen, fifteen, and nineteen.

The state is required to prove the respondent’s age by a preponderance of the evidence. The most common methods are by introduction of the child’s birth certificate or by testimony. Age is not an element of the state’s case. However, objections to age must be timely made or they are waived.² Age is more analogous to venue.³ The question is whether this is the proper court to hear the case in question.⁴

Generally a juvenile court’s power ends when a child turns eighteen with some exceptions. The state must file the petition for adjudication or the motion to modify prior to a child’s eighteenth birthday.⁵ However, the court retains jurisdiction after the age of eighteen as long as the court finds that the state exercised due diligence to complete the proceeding before the eighteenth birthday.⁶ The juvenile court may also retain jurisdiction on a motion for transfer of determinate sentence to a criminal district court

¹ Texas Family Code 51.02(2).

² Texas Family Code 51.042.

³ See Robert Dawson, *Texas Juvenile Law* 37 (7th ed. 2008).

⁴ See Robert Dawson, *Texas Juvenile Law* 37 (7th ed. 2008).

⁵ Texas Family Code 51.0412.

⁶ Texas Family Code 51.0412.

after the age of eighteen. The same caveats apply, the motion must be filed prior to the age of eighteen and due diligence must be exercised.⁷

Determinate Sentencing Offenses⁸

Murder: Penal Code section 19.02
Capital Murder: Penal Code section 19.03
Aggravated Kidnapping: Penal Code section 20.04
Aggravated Sexual Assault: Penal Code section 22.021
Criminal Attempt (if the offense attempted was capital murder): Penal Code section 15.01
Second Degree Felonies, up to 20 years imprisonment
Third Degree Felonies, up to 10 years imprisonment
Sexual Assault: Family Code section 53.045(a)(5)
Aggravated Assault: Family Code section 53.045(a)(6)
Aggravated Robbery: Family Code section 53.045(a)(7)
Injury to a child, elderly individual, or disabled person, other than a state jail felony: Family Code section 53.045(a)(8)
Felony Deadly Assault involving discharging a firearm: Family Code section 53.045(a)(9)
Indecency with a child by contact: Family Code section 53.045(a)(12)
Attempted Murder or Capital Murder: Family Code section 53.045(a)(14)
Criminal Attempt to commit 3g Offenses: Code of Criminal Procedure section 42.12, section 3g, Family Code section 53.045(a)(14) Murder Capital Murder Indecency with a Child by contact Aggravated Kidnapping Aggravated Sexual Assault Aggravated Robbery Sexual Assault
Criminal Conspiracy to commit any of the determinate sentence offense: Family Code section 53.045(a)(17)
Criminal Solicitation of Murder or Capital Murder: Family Code section 53.045(a)(11)
Drug Offenses, violations of the controlled substances act that are first degree felonies, or controlled substances felonies: Family Code section 53.045(a)(10)
Habitual Felony Conduct: Family Code section 53.045(a)
Arson with Injury: Penal Code section 28.02
Manslaughter and Intoxication Manslaughter: Penal code sections 19.04 and 49.08

⁷ Texas Family Code 51.0412.

⁸ See Robert Dawson, Texas Juvenile Law 507-511 (7th ed. 2008).

Juvenile courts retain jurisdiction, regardless of age, upon remand from an appellate court.⁹ As long as the conduct occurred prior to the age of seventeen, an appeal that reverses or modifies an order and results in a remand allows the juvenile court to continue.¹⁰ At that point, the juvenile court may transfer the proceeding or the adjudication may be retried.¹¹ The respondent over the age of eighteen may be released, detained in a juvenile or adult facility or given a bond pending the retrial.¹²

After the age of eighteen, the court's options on disposition narrow. The court can send the respondent to TYC on an indeterminate or determinate sentence. A youth may not be held in TYC past the age of nineteen.¹³ However, regular juvenile probation is no longer an option¹⁴ unless transferred to district court.¹⁵ The juvenile court may also release the respondent. If the child will be on probation past the age of eighteen, the probation must be transferred to an adult district court prior to the eighteenth birthday.¹⁶

At the age of fourteen, a respondent can be certified as an adult and transfer the case to a criminal district court.¹⁷ The respondent must have been at least fourteen years old at the time of the offense.¹⁸ Certification may only occur in the case of a capital felony, a first degree felony or an aggravated controlled substance felony.¹⁹ Further, there

⁹ Texas Family Code 51.041.

¹⁰ Texas Family Code 51.041.

¹¹ Texas Family Code 51.041.

¹² Texas Family Code 51.041.

¹³ Texas Human Resources Code 61.084(e)(g).

¹⁴ Texas Family Code 54.05(b).

¹⁵ Texas Family Code 54.04(q).

¹⁶ Texas Family Code 51.0412.

¹⁷ Texas Family Code 54.02(a)(2)(A).

¹⁸ Texas Family Code 54.02(a)(2)(A).

¹⁹ Texas Family Code 54.02(a)(2)(A).

must not have been an adjudication on that same offense.²⁰ At a hearing, the court must find probable cause the child committed the offense.²¹ There must also be a finding as to “the seriousness of the offense alleged or the background of the child the welfare of the community requires criminal proceedings.”²²

Fifteen is the minimum age for certification and transfer to a criminal district for any other felony.²³ Again the child must have been fifteen at the commission of the offense.²⁴ The juvenile court must make the same findings as to probable cause, seriousness of the offense, and community welfare.²⁵

Certification and transfer for respondents over the age of eighteen can occur if certain conditions are met. The respondent must have been over the age of ten and under seventeen at the time of a capital offense²⁶ or an offense defined under section 19.02 of the Texas Penal Code.²⁷ For the offenses of aggravated controlled substance felonies and first degree felonies, the respondent must have been at least fourteen but not over the age of seventeen at the time of the offense.²⁸ A respondent who is fifteen but not older than seventeen if the alleged offense is a second degree, third degree, or state jail felony.²⁹ There must have been no adjudication for the offense alleged.³⁰

²⁰ Texas Family Code 54.02(a)(2)(A).

²¹ Texas Family Code 54.02(3).

²² Texas Family Code 54.02(3).

²³ Texas Family Code 54.02(a)(2)(B).

²⁴ Texas Family Code § 54.02(a)(2)(B).

²⁵ Texas Family Code § 54.02(3).

²⁶ Texas Family Code § 54.02(j)((2)(A).

²⁷ See Texas Penal Code §19.02: Murder.

²⁸ Texas Family Code § 54.02(j)((2)(B).

²⁹ Texas Family Code § 54.02(j)((2)(C).

³⁰ Texas Family Code § 54.02(j)((3).

Certification and Transfer Ages

14	<p>Capital Felony</p> <p>First Degree Felony</p> <p>Aggravated Controlled Substance Felony</p>
15	<p>Any other Felony:</p> <ul style="list-style-type: none"> • Second Degree • Third Degree • State Jail

By a preponderance of the evidence, the juvenile court must find 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.”³¹ Finally, the juvenile court must find probable cause that the respondent committed the offense.³²

³¹ Texas Family Code § 54.02(j)(4).

³² Texas Family Code § 54.02(j)(5).