

NUTS AND BOLTS OF JUVENILE LAW

Sponsored by the Texas Juvenile Probation Commission
and Juvenile Law Section of the State Bar of Texas
August 22 – 23, 2005 • Renaissance Hotel, Austin, Texas

2005

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

Speaker Information

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Biographical Information

Darlene A. Whitten has been judge of the Denton County Court at Law No. 1 since October 1990. This court is the designated juvenile court for Denton County. Judge Whitten has served on the Juvenile Law Section of the Texas State Bar, the Juvenile Justice Committee of the Judicial Section and the Juvenile Advisory Commission of the Texas Board of Legal Specialization. She has also served on various other committees and boards concerning children's issues. Currently, Whitten is working with the Diversity Committee of the National Council of Juvenile and Family Court Judges. Darlene Whitten received her J.D. from Southern Methodist University in 1980.

Age Limits in the Juvenile Justice System Chapter 3

Age, not status such as married or emancipated, is a factor in the jurisdiction of a juvenile court along with geography and legislatively delineated conduct. "Person" is not defined in the Juvenile Justice Code, Title 3 of the Texas Family Code, but refers to someone who is not a "child" for purposes of the JJC.

Age is not an element that needs to be proven beyond a reasonable doubt but by a preponderance. For an adjudication, the proof needs to be the age in years. For a disposition, the date of birth is important because the disposition will have an ending that could depend on the date of the 18th or the 21st birthday.

Juvenile Justice Code

Cite	Topic	Age
F.C. § 51.02(2)(A)	"Child" for delinquent conduct "Child" in need of supervision	10 years up to 17 th birthday
F.C. § 51.02(2)(B)	"Child" for probation & probation violations	up to 18 th birthday
F.C. § 51.041(a)	Trial court jurisdiction after appeal and remand. For conduct before 17 th birthday	without regard to age
F.C. § 51.041(b)	"Person" may be in jail or on bond after appeal	18 years +
F.C. § 51.0411	Trial court jurisdiction for transfer to TDCJ or for release from TYC for subjects of determinate sentence [see F.C. § 54.11 (h)] [see F.C. § 54.04 (d), (e), (l)] [see H.R.C. § 61.001 (5)]	without regard to age
F.C. § 51.0412	Trial court jurisdiction continues for "child" or "person" for offenses by "child" filed before age 18 years and prosecutor due diligence.	without regard to age
F.C. § 51.042	Objection to juvenile court jurisdiction because of age must be before adjudication or discretionary transfer, before jeopardy attaches (see CCP Art. 4.18.)	beyond age jurisdiction
F.C. § 51.09	"Child" as trial witness and possible co- (see CCP Art. 24.011)	10 years up to 17 years
F.C. § 54.02	Trial court jurisdiction to transfer "child" to (a)(2)(A) adult district court for unadjudicated felony (capital felony, aggravated controlled substance felony, 1 st degree felony) [but see F.C. § 54.02 (j) and § 51.0412]	14 years up to 18 th birthday
F.C. § 54.02 (a)(2)(B)	Trial court jurisdiction to transfer "child" to adult 15 years up to district court for unadjudicated state jail or 2 nd or to 18 th birthday 3 rd degree felony. [but see F.C. § 54.02 (j) and F.C. § 51.0412]	15 years up to to 18 th birthday

Cite	Topic	Age
F.C. § 54.02 (j)	<p>Juvenile court jurisdiction AFTER finding state shows due diligence, or other good cause, to transfer a "person" to district court if the "person" was a "child" at the time of the following conduct:</p> <ul style="list-style-type: none"> - 10 years up to 17 years for capital felony or P.C. 19.02 (murder) - 14 years up to 17 years for capitol felony, aggravated controlled substance or 1st degree felony - 15 years up to 17 years for capitol, 1st, 2nd, 3rd, or state jail felony 	18 years or older
F.C. § 54.02 (o)-(r)	Remanded "person" may be held in county jail pending resolution of remanded case.	18 years +
F.C. § 54.031	"Child" for hearsay, outcry statement as child abuse victim	12 years or younger
F.C. § 54.04	Disposition (see "child" F.C. § 51.02)	may be 17 years +
F.C. § 54.04 (e)	TYC commitment	
F.C. § 54.04 (l)	A non-T.Y.C. probation ends	child's 18 th birthday
F.C. § 54.04 (q)	Trial court jurisdictional deadline to discharge determinate sentence probationer from probation or to transfer determinate sentence probationer to adult district court. Automatic discharge if no court action.	up to 18 th birthday
F.C. § 54.041 (b)	Parent/child ordered to pay restitution (can be until completes high school)	up to 18 th birthday
F.C. § 54.041 (h)	"Probationer" transferred to district court ordered to pay restitution	18 years +
F.C. § 54.05 (a) (1)	Trial court jurisdiction to modify disposition, except commitment to T.Y.C. (see F.C. § 51.0412 for motions to modify filed before 18 years.)	up to 18 th birthday
F.C. § 54.05 (b)	Dispositions end (except commitment to TYC)	18 th birthday
F.C. § 54.051 (a) (b), (c)	Trial court jurisdiction to transfer determinate sentence probationer to adult system district court or discharge from probation.	up to 18 th birthday
F.C. § 54.051 (i)	Juvenile trial court may probate a determinate sentence and at 18 years transfer supervision to adult criminal court.	age at disposition
F.C. § 54.08	Presumption of closed courtroom.	under 14 years

Cite	Topic	Age
F.C. § 54.11	Release or transfer of TYC resident to TDCJ for determinate sentence or habitual offender.	16 years to 21 years
F.C. § 54.11 (e)	An accused held for transfer/certification may be housed in an adult facility without bond.	17 years +
F.C. § 55.15	Court order for mental health services automatically expires	120 th day after 18 th birthday
F.C. § 55.18	Continuation of court proceedings after pre-18 th birthday discharge from mental health proceeding	up to 18 th birthday
F.C. § 55.19	Transfer to criminal court of pending F.C. § 53.045 case for inpatient juvenile	18 th birthday
F.C. § 55.43	Prosecuting attorney may file motion for restoration for child found unfit to proceed and then discharged/furloughed from mental health care. [See F.C. § 51.0412 and F.C. § 55.18]	discharge/furlough before 18 years
F.C. § 55.44	Transfer to criminal court of pending F.C. § 53.045 case for inpatient juvenile	18 th birthday
F.C. § 58.003 (a)	Mandatory sealing for misdemeanor and CINS upon finding 2 years elapsed since final discharge, no convictions or pending cases	whatever
F.C. § 58.003 (c)	Discretionary sealing for felony if not "transferred", not used as evidence in criminal sentencing, no adult felony conviction	21 years +
F.C. § 58.003 (l)	Discretionary destruction of sealed records of status/Class C	16 th birthday plus 5 years
F.C. § 58.0071 (d)(1)	Physical files may be destroyed for C.I.N.S. referral or non-offense	18 years +
F.C. § 58.0071 (d)(2)	Physical files may be destroyed for misdemeanor or unadjudicated felony referral	21 years +
F.C. § 58.0071 (d)(3)	Physical files may be destroyed for felony	31 years +
F.C. § 58.202	Automatic restricted access exemptions for sex offenders/criminal combination/gangs	
F.C. § 58.203	DPS certifies that juvenile justice information records are subject to Automatic Restriction of access for non-determinate sentence or non-transfer cases if no adult criminal record exists (access denied to employers, educational institutions and others except criminal justice agencies)	21 years +

Cite	Topic	Age
F.C. § 264.302	TDPRS may provide services to at risk youngsters	7 + years and under 17 years

CROSS REFERENCES

Cite	Topic	Age
Code of Criminal Procedure		
C.C.P. Art. 4.18	Use or lose plea to jurisdiction of criminal court because of age at the time of the offense.	before jeopardy
C.C.P. Art. 44.47	Appeal of transfer/certification with appeal of conviction.	without regard to age
C.C.P. art 62	Adjudicated "child" registers as sex offender unless otherwise ordered by the juvenile court, continuing for 10 years after exit from juvenile court disposition.	10 years to 17 th birthday for offense
C.C.P. Art. 62	Sex offender registration hearing on motion to determine registration requirements	without regard to age
Education Code		
E.C. § 25.094 (d)	JP/municipal court can transfer truancy to juvenile court.	10 years until 17 th birthday
Government Code		
G.C. § 508.156 (d)	adult parole supervision for transfers from TYC	21 years +
G.C. § 508.156 (e)	adult penalty for violation of adult parole for one serving balance of determinate sentence but not to exceed original juvenile sentence	21 years +
Human Resources Code		
H.R.C. § 61.001 (b)	maximum age of TYC commitment	until 21 years
H.R.C. § 61.079 (a)	TYC determinate sentence inmate may be transferred to prison by juvenile court	16 years to 21 years
H.R.C. § 61.081	TYC may request early release for determinate sentence inmate	10 to 21 years
H.R.C. § 61.084 (d), and (e)	TYC determinate sentence inmate for capital offense administratively paroled	21 years
H.R.C. § 61.084 (f)	TYC transfers supervision of determinate sentence parole to TDCJ pardons and parole	19 years
H.R.C. § 61.084 (g)	determinate sentence transferred from TYC to adult parole, except capital murder	age 21 years

Cite	Topic	Age
Penal Code		
P.C. § 8.07 (a)	a "child" can be prosecuted/convicted for perjury, aggravated perjury, Transportation Code offenses unless punishable imprisonment or confinement in jail, and most Class "C" misdemeanors and ordinances	without regard to age
P.C. § 24.011	For a witness younger than 18 years, subpoena issues to person with custody/care/control.	younger than 18 years

Criminal Violations, Delinquent Conduct and CINS

Chapter 4

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. But see: F.C. § 1.042 and P.C. § 8.07.

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 courts.

If a child's case is transferred from a lower criminal court (Justice of the Peace or Municipal Court) to a juvenile court, the various punishments such as fines do not follow the case. Once referred to the juvenile system, the options available as outlined in the progressive sanctions are the dispositional options and procedures to be followed.

A. District Court; felonies

- Those matters transferred from juvenile court; child certified to stand trial as adult.
- 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.
- If a determinate sentence probationer is transferred to criminal/district court supervision, the Juvenile Justice Code controls

B. Statutory County Court; jailable misdemeanors

- Appeals by the defendant from a Justice or Municipal Court, Class C matters
- 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

- City ordinances, including traffic ordinances, curfews
- Truancy/Failure to Attend School
- Transportation Code violations that are fine-only "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 regardless of the number of fine only traffic offenses.
- Penal Code violations with fine only penalty, Class C, including
P.C. § 38.151, taunting police animal
P.C. § 42.13, pointing laser light at specified workers
P.C. § 49.031, open container

- 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.
Public intoxication is never in a lower court.
- Education Code
Failure to attend school. E.C. § 25.094
K – 18 years
- 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 lower court is still the court of origin/filing. 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. Discretionary: The J.P or municipal court judge may transfer even the first fine only offense, including failure to attend school, but not including traffic matters.
F.C. § 51.08
Teen Court, CCP art. 45.051, is deferred adjudication not "conviction" for purposes of counting convictions.
- Q: For a discretionary transfer, should there be due process notice & hearing? There should at least be an Order of Transfer/Referral to Juvenile Court.
2. Mandatory: If a child has two convictions in any lower court, a lower court does not have jurisdiction over the 3rd allegation which is filed in the lower court and then referred to the juvenile system as a CINS referral. 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.

- 3rd fine only allegation (i.e. 2 prior convictions)
(unless lower court has juvenile case manager). The lower court can transfer a 1st or 2nd fine only offense to the juvenile court as a CINS referral
- Truancy. F.C. § 51.03 (b) (2)
F.C. § 54.021. Truancy can be transferred from juvenile court to J.P. or municipal courts annually for original filing with the lower court. The filing MUST take place within 7 school days of the last absence giving rise to the offense of truancy.

3rd truancy offense (i.e. 2 prior convictions) must be referred to juvenile court.

The married/divorced/widowed defense does not a