

## AGE LIMITS IN THE JUVENILE JUSTICE SYSTEM

### I. IN THE JUVENILE SYSTEM AGE IS JURISDICTIONAL

- A. Age at time of offense; "child"; preliminary investigation upon referral F.C. § 51.02 (2)(A)  
F.C. § 53.01 (a)(1)

Years 9 10 11 12 13 14 15 16 17 18 19 20 21

---

- B. Age for probation in home or removed from home F.C. § 51.02 (2)(B)  
F.C. § 54.05 (a)(1)

Years 9 10 11 12 13 14 15 16 17 18 19 20 21

---

- C. Age for occurrence of probation violation F.C. § 54.05 (a)(1)

Years 9 10 11 12 13 14 15 16 17 18 19 20 21

---

- D. Challenge to initial juvenile court jurisdiction because of age of child F.C. § 51.042

1. At adjudication/discretionary transfer hearing and BEFORE a finding of True or a decision about transfer. (TRCP 85, Plea to the Jurisdiction. Under Civil Rules in personam jurisdiction can be by consent.)

2. After appeal and upon remand whether appeal was under Ch. 56 or under Article 44.47, CCP. F.C. § 51.041(a)

Years 9 10 11 12 13 14 15 16 17 18 19 20 21 +

II. TEXAS YOUTH COMMISSION (TYC)

- A. Age at time of offense for commitment to TYC whether determinate or indeterminate sentence.

Years 9 10 11 12 13 14 15 16 17 18 19 20 21

- B. Age eligible for commitment to TYC whether determinate or indeterminate sentence. F.C. § 54.04 (e)

Years 9 10 11 12 13 14 15 16 17 18 19 20 21

- C. Age eligible for TYC involvement, whether residential or parole H.R.C. § 61.001(b)  
H.R.C. § 61.084 (e)

Years 9 10 11 12 13 14 15 16 17 18 19 20 21

III. DETERMINATE SENTENCE JUVENILES

- A. Commitment to TYC (see TYC, generally, above) F.C. § 53.045  
F.C. § 54.04 (d)(3)  
F.C. § 54.04 (e)  
H.R.C. § 61.001 (b)

- B. Continuing juvenile court jurisdiction to sentence a person to Texas Dept. of Corrections without regard to the age of the person. F.C. § 51.0411

Years 9 10 11 12 13 14 15 16 17 18 19 20 21 +

- C. For determinate sentence probationer with actual sentence of not more than 10 years with probation not more than 10 years, then juvenile court: F.C. § 54.04 (q)  
F.C. § 54.051

1. BEFORE 18<sup>th</sup> birthday may discharge child from determinate sentence probation. F.C. § 54.051

Years 9 10 11 12 13 14 15 16 17 18 19 20 21

2. or UPON 18th birthday shall discharge probationer unless a hearing on state's motion before 18th birthday transferred probationer to adult district court supervision. F.C. § 54.041

Years 9 10 11 12 13 14 15 16 17 18 19 20 21

3. Determinate sentence probationer under district court supervision shall pay balance of any restitution; parents released from order to pay at age 18. F.C. § 54.041 (h)

Years 9 10 11 12 13 14 15 16 17 18 19 20 21 +

D. For institutionalized determinate sentence inmate:

1. TYC may request hearing in juvenile court for approval to transfer determinate sentence inmate to TDCJ after 16<sup>th</sup> birthday and before 21<sup>st</sup> birthday. F.C. § 54.11  
H.R.C. § 61.079

Years 9 10 11 12 13 14 15 16 17 18 19 20 21

2. TYC may request hearing in juvenile court for release before completion of minimum length of stay at any time. F.C. § 54.11  
H.R.C. § 61.081 (f)

Years 9 10 11 12 13 14 15 16 17 18 19 20 21

3. For determinate sentence juvenile released on parole, TYC transfers parolee to pardons and parole division of TDCJ at 19th birthday to complete determinate sentence. F.C. § 54.11  
H.R.C. § 61.084 (f)

Years 9 10 11 12 13 14 15 16 17 18 19 20 21

4. If determinate sentence juvenile is still institutionalized, TYC automatically transfers person to TDCJ on 21st birthday for parole. F.C. § 54.11  
H.R.C. § 61.084 (g)

Years 9 10 11 12 13 14 15 16 17 18 19 20 21

5. If capital murder determinate sentence inmate has not been released or served minimum length of stay, TYC shall automatically transfer person to TDCJ on 21st birthday. For new offenses after 9-1-03, transfer will be for parole. H.R.C. § 61.084 (d)

Years 9 10 11 12 13 14 15 16 17 18 19 20 21

IV. CERTIFICATION TO STAND TRIAL AS ADULT/TRANSFER TO CRIMINAL DISTRICT COURT

- A. Primary option for juvenile court waiver of jurisdiction if age at time of offense was: F.C. § 54.02 (a)  
F.C. § 51.041  
F.C. § 51.0412

1. For a capital felony, aggravated controlled substance felony, or felony of 1st degree, age 14 years to 17<sup>th</sup> birthday

Years 9 10 11 12 13 14 15 16 17 18 19 20 21

---

2. For a 2nd or 3rd degree felony or state jail felony, age 15 years to 17<sup>th</sup> birthday.

Years 9 10 11 12 13 14 15 16 17 18 19 20 21

---

- B. Secondary option for juvenile court waiver of person who is now 18 years or older, the state proves due diligence or impracticable to proceed earlier, and at the time of the offense the person was: F.C. § 54.02 (j)

1. Between 10 and 17 years for a capital felony or any offense under P.C. § 19.02

Years 9 10 11 12 13 14 15 16 17 18 19 20 21

---

2. Between 14 and 17 years for an aggravated controlled substance felony or 1st degree felony (except P.C. § 19.02)

Years 9 10 11 12 13 14 15 16 17 18 19 20 21

---

3. Between 15 and 17 years for a 2<sup>nd</sup> or 3<sup>rd</sup> degree felony or state jail felony

Years 9 10 11 12 13 14 15 16 17 18 19 20 21

---

V. CHAPTER 55, MENTAL HEALTH

- A. Age at time of offense

Years 9 10 11 12 13 14 15 16 17 18 19 20 21

---

- B. Court order for juvenile mental health services automatically expires 120 days after 18<sup>th</sup> birthday F.C. § 55.15

Years 9 10 11 12 13 14 15 16 17 18 19 20 21

---

- C. Continuation of juvenile proceedings if child discharged from mental health facility before age 18 F.C. § 55.18  
F.C. § 51.0412

Years 9 10 11 12 13 14 15 16 17 18 19 20 21 +

---

- D. Automatic transfer to criminal court of pending juvenile court proceedings for F.C. §53.045 offenses (violent/habitual offenders) if person under inpatient/residential care at age 18 years. F.C. § 55.44

Years 9 10 11 12 13 14 15 16 17 18 19 20 21

---

## AGE LIMITS IN THE JUVENILE JUSTICE SYSTEM

### 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 17th birthday
F.C. §51.02(2)(B)	"child" for probation & probation violations	up to 18 <sup>th</sup> birthday
F.C. §51.041(a)	trial court jurisdiction after appeal and remand	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	9-1-01 to present: trial court jurisdiction of "child" or "person" for offenses by "child" filed before age 18 years and due diligence. (R.E.M. 569 SW2nd 613. 1978 until 7-1-99. Juvenile jurisdiction, timely invoked, continued until final disposition.) (7-1-99 until 9-1-01, juvenile court did not have jurisdiction to adjudicate an 18-year old. N.J.A.	without regard to age
F.C. §51.042	Objection to juvenile court jurisdiction because of age must be before adjudication or discretionary transfer (see CCP art. 4.18.)	beyond age jurisdiction
F.C. §51.09	"child" as trial witness and possible co-respondent (see CCP art. 24.011)	10 years up to 17 years
F.C. §53.01	Preliminary investigation of youth to determine status as "child" upon referral to juvenile system.	any age
F.C. §54.02 (a)(2)(A)	Trial court jurisdiction to transfer "child" to adult district court for unadjudicated felony (capital felony, aggravated controlled substance felony, 1 <sup>st</sup> degree felony) [but see F.C. § 54.02 (j) and § 51.0412]	14 years up to 18 <sup>th</sup> birthday
F.C. §54.02 (a)(2)(B)	Trial court jurisdiction to transfer "child" to adult district court for unadjudicated state jail or 2 <sup>nd</sup> or 3 <sup>rd</sup> degree felony. [but see F.C. § 54.02 (j) and F.C. § 51.0412]	15 years up to 18 <sup>th</sup> birthday

F.C. §54.02 (j)	Trial court jurisdiction AFTER finding state used due diligence or other good cause to transfer a person to district court who was a "child" at the time of conduct:  - 10 years up to 17 years for capital felony or P.C. 19.02 - 14 years up to 17 years for aggravated controlled substance or 1st degree felony - 15 years up to 17 years for 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)	
F.C. §54.04 (e)	TYC commitment	may be 17 years +
F.C. §54.04 (l)	a non-T.Y.C. probation ends	child's 18 <sup>th</sup> 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 <sup>th</sup> birthday
F.C. §54.041 (b)	parent/child ordered to pay restitution (can be until completes high school)	up to 18 <sup>th</sup> 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 <sup>th</sup> birthday
F.C. §54.05 (b)	Dispositions end (except commitment to TYC)	18 <sup>th</sup> 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 <sup>th</sup> birthday
F.C. §54.08	Presumption of closed courtroom.	under 14 years
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 (l)	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 <sup>th</sup> day after 18 <sup>th</sup> birthday
F.C. §55.18	continuation of court proceedings after pre-18 <sup>th</sup> birthday discharge from mental health proceeding	up to 18 <sup>th</sup> birthday
F.C. §55.19	transfer to criminal court of pending F.C. § 53.045 case for inpatient juvenile	18 <sup>th</sup> 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 <sup>th</sup> 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 <sup>th</sup> 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 and no adult criminal record (access denied to employers, educational institutions and others except criminal justice agencies)	21 years +

F.C. §61.051 (c)	Juvenile court retains jurisdiction to enter contempt of court against a parent if the motion is filed by age 18 ½.	18 years 6 months
F.C. §264.302	TDPRS may provide services to at risk youngsters	7 years and under 17 years

**CROSS REFERENCES**

**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 62.02 ff	Adjudicated "child" registers as sex offender otherwise ordered by the juvenile court, continuing for 10 years after exit from juvenile court disposition.	10 years to 17 <sup>th</sup> unless birthday for offense
C.C.P. art. 62.13 (m)	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 <sup>th</sup> 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

**Penal Code**

P.C. § 8.07 (a)	a "child" can be prosecuted/convicted for perjury, aggravated perjury, most Transportation Code offenses, and most Class "C" misdemeanors	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

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.

## 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

- 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 of 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
- 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:

- Failure to stop and render aid without personal injury, but with property damage under \$200. Trans. C. § 550.022
- Failure to stop and render aid without person injury, unattended vehicle; property damage under \$200. Trans. C. § 550.024
- Reckless driving. Trans. C. § 545.401
  
- 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.  
1<sup>st</sup> and 2<sup>nd</sup> DUI for "any detectable amount."  
DUI is not a lesser included of DWI. ABC § 106.041.

- 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 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 – 3<sup>rd</sup> violation became CINS. No criminal court or juvenile court involvement in 1<sup>st</sup> and 2<sup>nd</sup> offenses.
2. 1987 to 1989 – Lower court jurisdiction over 1<sup>st</sup> and 2<sup>nd</sup> offense. 3<sup>rd</sup> 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 1<sup>st</sup> or 2<sup>nd</sup> offense.
4. 1991 – Lower court jurisdiction over 1<sup>st</sup> and 2<sup>nd</sup> offense. Mandatory transfer to juvenile court upon filing 3<sup>rd</sup> 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 3<sup>rd</sup> 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.

- 3<sup>rd</sup> fine – only allegation (i.e. 2 prior convictions)  
(September 2001: unless lower court has juvenile case manager)
- 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  
3<sup>rd</sup> offense (i.e. 2 prior convictions) must be referred to juvenile court  
2001 Defense of “married, divorced or widowed” eliminated.  
N.B. The married/divorced/widowed defense never applied to Education Code § 25.094, failure to attend school.

- Running away from home. F.C. § 51.03 (b) (3) unless "child" is married/divorced/widowed. "Substantial length of time" is flexible.
- 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.
- Public Intoxication. F.C. § 51.03 (b) (1) since 1989.
- 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.
- 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**

- Penal code violations that are jailable misdemeanors or felonies F.C. § 51.03 (a). Since 1993 includes both Texas and Federal penal codes. Includes perjury.
- 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.
- DUI – driving under the influence of any amount of alcohol, 3rd offense. F.C. § 51.03 (a) (5). ABC § 106.041
- 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. N.B. September 1, 2001, evading arrest using a vehicle may have an increased penalty and there will be more drivers license restrictions for DWI offenders.
- 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.
- Transportation Code § 545.420 drag racing can be Class "B" up to felony.
- Transportation Code § 521.457 for driving while license invalid.
- 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.