

## Juvenile Certification

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Robert O. Dawson Juvenile Law  
Institute  
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## What is Certification?

- In short – it is trying a child as an adult.
  - Certification is also sometimes referred to as Waiver of Jurisdiction, and as C&T (Certify and Transfer).
- Governed by TFC 54.02, entitled Waiver of Jurisdiction and Discretionary Transfer to Criminal Court.

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## Who asks and who decides?

The local prosecutor decides whether to ask the juvenile Court to waive its exclusive original jurisdiction.

The juvenile Court makes the decision (there is NO right to a jury).

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### Three types

- Under 18 – permissive. See TFC 54.02(a)-(h).
- Under or over 18 – mandatory. See TFC 54.02(m)-(n).
- Over 18 – permissive. See TFC 54.02(j)-(l), and (o)- (r).

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### General Rules

- Child/Person must have an attorney.
- There must be a hearing.
- The Judge’s decision cannot be appealed unless and until the Respondent is later convicted on one of the transferred offense in an adult Criminal court.
  - NOTE – if offense was prior to 1996, the person gets an immediate appeal, BUT no stay of proceedings.

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### General Rules

- If certified, there must be evidence of the Transfer Order in the adult proceeding, otherwise the conviction will be reversed for lack of jurisdiction. This is a legal issue, not a jury issue.
  - But see CCP 4.18 – Defendant must make claim of underage as defense to prosecution, otherwise it is waived.

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## General Rules

- CCP 4.18 – No timely objection necessary in criminal court to preserve claim of defect in certification proceedings for post-conviction appeal.
  - BUT, remember - objection is required for claim that there were NO certification proceedings at all. See previous slide.

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## Under 18 - permissive

- Age at time of offense is the key.
- Two tiers:
  - Available at age 14, 15 and 16 if the offense is a
    - Capital Felony
    - Aggravated Controlled Substance Felony
    - First degree felony

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## Under 18 - permissive

- Second tier:
  - Available at age 15 and 16 if the offense is a
    - Second degree Felony
    - Third degree Felony
    - State jail felony

IMPORTANT NOTE: THERE CANNOT HAVE BEEN AN ADJUDICATION HEARING CONCERNING THIS OFFENSE PRIOR TO THE CERTIFICATION DECISION

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### Under 18 - permissive

- Special summons requirement.
  - The summons must state that the hearing “is for the purpose of considering discretionary transfer to criminal court.”
  - NOTE: There is a different summons requirement if it is a post-18 (over 18) cert.

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### Under 18 - permissive

- There must be a full investigation and a hearing.
- Prior to the hearing the Court shall order and obtain a complete diagnostic study, social evaluation, and full investigation of the child, his circumstances, and the circumstances of the offense.

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### Under 18 - permissive

- Only two issues at this hearing:
  - Is there PC?
  - If so, then do either the seriousness of the offense alleged or the background of the child indicate that the welfare of the community requires criminal proceedings?
  - If the answer to both is “yes,” then the Court *may* certify.

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### Under 18 - permissive

- Because this is just a probable cause hearing and is not dispositive of any issue related to guilt or innocence, *Crawford* and its progeny do not generally apply – and, as in an examining trial, hearsay is generally admissible.

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### Under 18 - permissive

- In making its decision, the court shall consider, at a minimum, the following:
  - Whether the offense is against person or property;
  - The sophistication and maturity of the child;
  - The record and previous history of the child; and
  - The prospects of adequate protection of the public and the likelihood of rehabilitation of the child through use of the juvenile system.

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### Under 18 - permissive

- The Juvenile court must either waive its jurisdiction as to an entire transaction, or it must retain jurisdiction as to the entire transaction.
  - Exception – new law: TFC54.02(g-1) – if Court retained jurisdiction as to a transaction, but an associated offense had not yet been completed, the Court can waive as to that offense once the offense has been completed – but the offense must involve a subsequent death in order for this exception to apply.

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### **Under 18 - permissive**

- Upon waiver/certification – the Court must give its reasons in writing, transfer the person to adult criminal court, and send the diagnostic study to the adult prosecutor.
  
- The adult criminal court cannot refuse jurisdiction and send the child back.

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### **Under 18 - permissive**

- The child is now treated as an adult.
- If the child is in custody, then the transfer of custody acts as an arrest.
- The child may be held in a juvenile facility (rather than the county jail) pending trial while he remains under the age of 18.
- The child will be entitled to bond in the same way that an adult would.

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### **Under 18 - permissive**

- The case now proceeds like any other adult case and must be presented to a Grand Jury and indicted in order to go any further.
- Differences upon conviction:
  - Certified child cannot get the death penalty.
  - Certified child cannot get life without parole (rather, it's the old capital life – 40 year minimum).

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### **Under or Over 18 - mandatory**

- If a person has previously been certified as an adult and he picks up a new felony while still under the age of 17, the Juvenile court must waive jurisdiction, UNLESS:
  - Not indicted on old transferred offense
  - Found not guilty on old transferred offense
  - Old transferred offense dismissed with prejudice, or
  - Conviction on old transferred offense reversed on appeal and appeal is final.

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### **Under or Over 18 - mandatory**

- The summons must state that the purpose of the hearing is to consider mandatory transfer to criminal court.
- No need for the diagnostic study, etc., required by subsection (d).

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### **Over 18 - permissive**

- A Juvenile court can certify a child and waive its jurisdiction for a juvenile offense even after the child has attained the age of 18 prior to being prosecuted. TFC 54.02(j), etc.
- The age ranges change.
- The prosecutor has to show clean hands.

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### Over 18 - permissive

- The summons must state that the hearing “is for the purpose of considering waiver of jurisdiction under Subsection (j) of TFC 54.02.”
  
- Judge decision, NOT jury.

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### Over 18 - permissive

- Required findings:
  - Defendant now 18 or older
  - At time of offense was:
    - 10-16, if murder or capital offense
    - 14-16, if agg. c/s offense or 1<sup>st</sup> degree felony
    - 15-16, if 2<sup>nd</sup>, 3<sup>rd</sup>, or SJF
  - No prior adjudication for offense, or no prior adjudication hearing regarding the offense
  - PC; and

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### Over 18 - permissive

- Required findings, cont.:
  - By a preponderance, either:
    - For a reason beyond the control of the state it was not practicable to proceed in juvenile court before the 18<sup>th</sup> birthday of the person; OR
    - After due diligence of the state it was not practicable to proceed in juvenile court before the 18<sup>th</sup> birthday of the person because:
      - No PC, but new evidence found after 18, or
      - Couldn't find the defendant, or
      - A previous transfer order was reversed or set aside.

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### Over 18 - permissive

- If the defendant is in custody, he is entitled to a detention hearing. He must be released unless:
  - Likely to abscond, or
  - Danger to self/threat to public safety, or
  - Previously found delinquent OR previously convicted of a criminal offense, AND likely to commit an offense if released. TFC 54.02(o).

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### Over 18 - permissive

- If detained, can stay in juvenile facility or County jail. TFC 54.02(p).
  - If kept in juvenile, must be kept separate from children. TFC 54.02(q).
  - If sent to jail, court sets or denies bond as with other adults. TFC 54.20(r).

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### Contacting Me

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