

## **CERTIFICATION PROCEEDING**

**PURPOSE: TO ALLOW A JUVENILE COURT TO WAIVE ITS EXCLUSIVE ORIGINAL JURISDICTION AND TRANSFER A JUVENILE TO ADULT CRIMINAL COURT “BECAUSE OF THE SERIOUSNESS OF THE OFFENSE ALLEGED OR THE BACKGROUND OF THE CHILD THE WELFARE OF THE COMMUNITY REQUIRES CRIMINAL PROCEEDINGS.” TFC 54.02**

### **AGE REQUIREMENTS:**

- A. Juvenile age 14-17: Capital Offenses, Aggravated Controlled Substance felony, First Degree Felonies
- B. Juvenile age 15-17: Any Felony Offense

### **PROCESS:**

- A. Referral is made to Juvenile Probation
- B. Prosecutor files Petition/ Motion to Transfer  
The Petition/ Motion for Discretionary Transfer must meet the requirements of TFC53.04
- C. Juvenile Court conducts a certification hearing
  - 1. Juvenile Court may deny the motion to transfer
    - a. State may seek grand jury approval for determinate sentence
    - b. State may dispose of case with non-determinate sentence
  - 2. Juvenile Court may grant the motion to transfer after a hearing Respondent, with counsel, may waive hearing
- D. Certified case must be presented to the Grand Jury for Indictment
  - 1. Case is true-billed by Grand Jury
    - a. case is tried in adult criminal court
    - b. guilty verdict-juvenile sentenced within range of punishment allowed for the offense,
    - c. no death penalty sentence allowed for capital crimes; mandatory life sentence
    - d. sentence is served out in adult system
  - 2. No-bill by a Grand Jury, juvenile released from any further juvenile or adult proceedings for that offense. The criminal court cannot remand the child back to the jurisdiction of the juvenile court.

### **CERTIFICATION HEARING:**

- A. The Juvenile Court is required to consider the following factors in making the determination to certify:
  - 1. The seriousness of the offense
  - 2. The sophistication of the child

3. The child's previous history
4. The protection of the public
5. The likelihood of rehabilitation in the juvenile system

**\*Note: The juvenile does not have to have been adjudicated delinquent before or have a prior referral history.**

- B. The Juvenile Court is required to make the following findings before it may waive its jurisdiction:
  1. The child is alleged to have committed a felony
    - a. age 14 at time of offense and offense is a capital crime, aggravated controlled substance felony, or a first degree felony
    - b. age 15+ and offense is a felony
  2. No adjudication hearing has been conducted concerning the offense
  3. There is probable cause to believe that the child committed the offense alleged
  4. Because of the seriousness of the offense or the background of the child, the welfare of the community requires criminal proceedings
- C. The Certification Hearing is conducted without a Jury.
- D. Prior to the hearing, the Juvenile Court is required to order and obtain " a complete diagnostic study, social evaluation and full investigation of the child, his circumstances, and the circumstances of the alleged offense".
- E. The Juvenile Court may consider the diagnostic study, written reports from probation officers, professional court employees, professional consultants, and witness testimony.
- F. All written material to be considered by the Juvenile Court must be made available to the Respondent's attorney at least one day prior to the transfer hearing.
- G. If the juvenile court waives jurisdiction, it shall state specifically in its order its reasons for waiver and certify its action, including written order and findings of the court
- H. The results of the diagnostic study are transferred, including psychological information, to the criminal prosecutor.
- I. On transfer of the respondent for criminal proceedings, respondent is dealt with as an adult and in accordance with the Code of Criminal Procedure. The transfer of custody is an arrest.

### **AGE 18 OR OLDER**

TFC 54.02 (j) allows the Juvenile Court to waive its exclusive jurisdiction and transfer an individual to adult criminal court for criminal proceedings if:

- (1) the person is 18 years or older;
- (2) the person was:
  - (A) 10 years of age or older and under 17 at time of alleged offense; offense is a capital felony or murder
  - (B) 14 years of age or older and under 17 at time of alleged offense; offense is an aggravated controlled substance felony or a felony of the first degree other than murder **or**
  - (C) 15 years of age or older and under 17 at time of alleged offense; offense is a second or

- third degree felony or 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 18<sup>th</sup> birthday of the person or;
    - (B) 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:
      - (i) the state had no probable cause to proceed and new evidence has been found since the 18<sup>th</sup> 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 there is probable cause to believe the person committed the offense

#### **Certification Hearing for Individuals age 18+**

- (1) Juvenile Court waives jurisdiction after a hearing and transfers case to adult criminal court or
- (2) Juvenile Court denies motion to transfer, case must be dismissed. Juvenile Court has no jurisdiction to proceed if certification is denied.
- (3) No right to a jury

#### **Detention for Individual age 18+ Pending a Certification Hearing**

An individual taken into custody pending transfer proceedings is entitled to a detention hearing. The juvenile court must release the individual unless it finds the individual is:

- (1) likely to abscond or be removed from the court's jurisdiction **or**
- (2) maybe dangerous to self or others or threaten the safety of the public **or**
- (3) has previously been found to be a delinquent child; or previously been convicted of offense punishable by jail or prison and is likely to commit an offense if released

#### **If not released, Individual +18:**

- (1) May be detained in a certified juvenile facility; and must be kept separate from other detained juveniles, **or**
- (2) May be held in county jail, and the juvenile court may set a bond or deny bond as required by the Code of Criminal Procedure

## **MANDATORY TRANSFERS:**

The Juvenile Court **shall** waive jurisdiction and transfer the to adult criminal court if:

- (1) the child has previously been transferred to adult criminal court under TFC 54.02 unless:
  - A. the grand jury did not indict the case previously transferred;
  - B. the child was found not guilty;
  - C. the case was dismissed with prejudice; or
  - D. the child was convicted, but the conviction was reversed on appeal, appeal is final.
- (2) the offense alleged is a felony
- (3) no diagnostic study is required
- (4) a petition and a hearing are required (transfer is not automatic)

Note: The juvenile court, in waiving jurisdiction, does so regarding the **conduct/criminal transaction** and the criminal court has jurisdiction only as to the conduct/criminal transaction in the transfer order.

## **DETERMINATE SENTENCE**

**PURPOSE:** To give serious juvenile offenders (10 years of age or older but less than 17 years of age) the benefit of rehabilitation while holding them responsible for the crime committed. Determinate sentence keeps the possibility of punishment in the Texas Department of Corrections an option if the juvenile fails to seek positive, rehabilitative change in the juvenile system.

### **OFFENSES COVERED BY DETERMINATE SENTENCE (Section 53.045)**

- Murder (19.02)
- Capital Murder (19.03)
- Manslaughter (19.04)
- Aggravated Kidnapping (20.04)
- Aggravated Sexual Assault (22.021) [but child must be > 3 years older than the victim]
- Sexual Assault (22.011) ) [ but child must be > 3 years older than the victim]
- Aggravated Assault (22.02)
- Aggravated Robbery (29.03)
- Injury to a child, elderly, disabled, if of a grade higher than state jail (22.04)
- Felony Deadly conduct/discharge of a firearm (22.05[b])
- First degree or Aggravated Drug cases (481 HSC)
- Criminal Solicitation (15.031)
- Criminal Attempt Murder, Capital Murder or 3g offenses (15.01)
- Arson w/ death or bodily injury (28.02)
- Intoxication Manslaughter (49.08)
- Habitual felon -- if a child ahs been previously adjudicated for two prior felonies other than state jail felonies, and 2<sup>nd</sup> previous adjudication occurred after the date the 1<sup>st</sup> adjudication became final  
**(Section 51.031)**

**PUNISHMENT [Section 54.04 (3) (a-c)]**

- Cases punishable in adult system as a capital, aggravated controlled substance or first degree felony **up to 40 years**
- Cases punishable in adult system as a 2<sup>nd</sup> degree felony **up to 20 years**
- Cases punishable in adult system as a 3<sup>rd</sup> degree felony **up to 10 years**

If the judge or jury assesses punishment of 10 years or less, they may grant probation. The judge must place the child on probation for any term not to exceed 10 years with the conditions of the probation determined by the Court.

**Minimum Lengths of Stay [HRC Section 61.081(f)]**

There are statutory minimum lengths of stay under the determinate sentence statute depending upon the offense. They are:

Capital Murder .....	10 years
First degree felony or aggravated controlled substance felony .....	3 years
Second degree felony .....	2 years
Third degree felony .....	1 year

**THE PROCESS [Section 53.045 (b) (c) (d) (e)]**

1. A delinquency petition must be filed in the juvenile court
  - a. The petition must allege one of the offenses mentioned above but may allege non-covered offenses as well (53.045)
  - b. A grand jury approval can only be obtained and only affect the covered offense above.
2. Prosecution decides whether or not to invoke the rights under the Determinate Sentence act.
3. The petition is presented to the grand jury of the county where the court in which the petition is filed presides.
  - a. The child has no right to an examining trial prior to presentment.
4. The grand jury may accept or reject the petition.
  - a. If it is rejected, the State may proceed as an ordinary petition or resubmit the case to this or a new grand jury or seek certification if permitted.
  - b. If it is accepted (the standard is probable cause to believe the child is delinquent on the criminal offense) by 9 of the 12 grand jurors, then the grand jurors certify their approval.
5. The grand jury must certify their approval in writing and return the approved petition to the appropriate district court where it is then filed with that court.

6. The State may amend the petition after grand jury approval as long as the change is not material, i.e., it does not charge the child with additional or different offenses and prejudice none of his/her substantial rights. If the change is material, the petition should be re-presented to the Grand Jury.
7. Like adult cases, the juvenile may waive his right to grand jury approval so long as the formal requirements of Family code 51.09 are met:
  - a. The waiver is made by the child and his/her attorney,
  - b. The child is informed of the right and understand the possible consequences of waving it,
  - c. The waiver is voluntary, and
  - d. The waiver is made I writing or on a recorded court proceeding.
8. Disposition (sentencing), although **always** done in non-determinate cases by the Judge, may be imposed by the Judge or Jury upon the Child's election.
  - a. If the child does not waive the right to jury sentencing, then a jury will sentence.
  - b. There is no deadline for the child to elect jury punishment. The child may even wait after the adjudication process to elect.
9. Because a child who is committed to TYC may be transferred to TDCJ and the length of incarceration lengthened if a deadly weapon is involved, the child is entitled to notice before the adjudication hearing begins that the State is seeking a deadly weapon finding. This may be done by: **[Government Code Section 508.145(b)]**
  - a. expressly charging that the offense was committed with a deadly weapon in the petition, or
  - b. the State may, in a separate notice, tell the child of its intent to seek a deadly weapon finding, or
  - c. if the petition charges that a homicide was committed it has implicitly charged use of a deadly weapon.

**\*Note\*** There can only be a deadly weapon finding by the Court if the child is in **actual** possession of the weapon. (i.e. there can be no deadly weapon finding on a juvenile who served as a lookout in an aggravated robbery.)







