

# Detention Hearings



## Speaker Information

Richard L. Ainsa is the current Juvenile Court Referee for the 65th District Court, El Paso County, Texas. Prior to assuming his duties as Referee, Mr. Ainsa was in private practice with a substantial portion of his practice devoted to juvenile defense. He graduated from the University of Texas School of Law and has practiced in El Paso his entire career. He is Board Certified in Juvenile Law.

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# Detention Hearings

## I. TYPES OF REFERRAL

Detention will be considered for a child [TFC 51.02(2)] who is:

- a. Accused of Engaging in Delinquent Conduct [TFC 51.03(a)], or Conduct Indicating a Need for Supervision. [TFC 51.03(b)].
- b. A Status Offender [TFC 51.01(15)], or Nonoffender [TFC 51.01(8)].

## II. INITIAL REFERRAL

Upon initial referral to office or facility designated by juvenile board, a child shall be immediately released if it is determined that:

- a. The person is not a child [TFC 53.01(b)];
- b. There is no probable cause to believe that the child:
  1. Has engaged in delinquent conduct or conduct indicating a need for supervision [TFC 53.01(a)(2)(A) and (b)]; or
  2. Is a nonoffender who has been taken into custody solely for deportation [TFC 53.01(a)(2)(B) and (b)]

## III. CUSTODY ESTABLISHED:

When custody of a child is given or established, parents shall promptly be given notice of the child's whereabouts and reasons for custody [TFC 53.01(c)] and those matters listed in TFC 61.102.

- a. Juvenile may be released to parents under conditions reasonably necessary to insure later appearance at court or proceedings [TFC 53.02(a)];
- b. Conditions of release must be in writing and provided to the court and juvenile [TFC 53.02(a)].
- c. Parents subject to contempt upon failure to return juvenile to court. [TFC 53.02(d)].

## IV. DETENTION PRIOR TO HEARING BEFORE COURT:

After investigation, child shall be released unless detention is warranted because of the circumstances listed below. [TFC 53.02(a)]

- a. The child is likely to abscond or be removed from the jurisdiction of the court. [TFC 53.02(b)(1)]
- b. Suitable supervision, care or protection is not being provided for the child. [TFC 53.02(b)(2)]
- c. There is no parent or person able to return the child to court. [TFC 53.02(b)(3)]
- d. The child presents a danger to himself/herself or to the public. [TFC 53.02(b)(4)]
- e. The child has been adjudicated a delinquent child or convicted of an offense punishable by jail/prison and is likely to commit an offense if released. [TFC 53.02(b)(5)]
- f. A firearm [TPC 46.01] was used, possessed or exhibited by the child during the delinquent conduct. [TFC 53.02(b)(6) and TFC 53.02(f)] (**NOTE:** Detention is mandatory under these sections.)

**V. DETENTION HEARING BEFORE THE COURT  
(ENGAGING IN DELINQUENT CONDUCT/CONDUCT IN NEED OF SUPERVISION):**

a. Time:

Promptly, but no later than second working day after child taken into custody. [TFC 54.01(a)] (**NOTE:** If a child is taken into custody without a warrant or directive to apprehend, the court must find probable cause that child engaged in delinquent conduct, conduct indicating a need for supervision or conduct that violates probation within 48 hours of taking into custody. [TFC 54.01(o)])

b. Notice:

1. Reasonable notice, oral or written, stating time, place and purpose of hearing shall be given to the child and parents, if they can be found. [TFC 54.01(b)]
2. Hearing may be held without parents, but court shall appoint counsel or guardian ad litem for the child. [TFC 54.01(d)]

c. Admonishment of rights:

1. Right to counsel; appointed if indigent. [TFC 54.01(b)]
2. Right to remain silent. [TFC 54.01(b)]
3. If case being heard by referee, right to object to referee and have case heard before juvenile judge within 24 hours. [TFC 54.01(l)]

d. Evidence:

1. Written reports from probation officers, professional court employees or professional consultants. [TFC 54.01(c)]
2. Testimony of witnesses. [TFC 54.01(c)]
2. No statement made by juvenile shall be admissible against the child at another hearing. [TFC 54.01(g)]

e. Detention warranted:

1. The child is likely to abscond or be removed from the jurisdiction of the court. [TFC 54.01(e)]
2. Suitable supervision, care or protection for the child is not being provided. [TFC 54.01(e)]
3. There is no parent or person able to return the child to court. [TFC 54.01(g)]
4. The child presents a danger to himself/herself or to the public. [TFC 54.01(g)]
5. The child has been adjudicated a delinquent child or convicted of an offense punishable by jail/prison and is likely to commit an offense if released. [TFC 54.01(g)]
6. A firearm [TPC 46.01] was used, possessed or exhibited by the child during the delinquent conduct. [TFC53.02 (f)]

f. Duration of detention order:

1. Until end of disposition hearing, but no more than 10 days. Further detention may be ordered upon another detention hearing, or upon waiver executed by child and attorney. Initial detention hearing may not be waived. [TFC 54.01(h)]
2. 15 days in county with no certified detention facility. [TFC 54.01(h)]
3. Until the end of the next working day after judge receives findings and recommendations from referee, if judge does not adopt or modify recommendations. [TFC 54.01(l)] **(NOTE: a recommendation by the referee to release the child results in the immediate release of the child. [TFC 54.01(l)])**
4. If the child had no attorney at the hearing, a new hearing shall be conducted within 2 working days after written request by the attorney. Request must be within 10 days from attorney's appointment to represent child. [TFC 54.01(n)]
5. 30 working days after initial hearing, including subsequent hearings and waivers, if no petition has been filed in case where child is alleged to have engaged in conduct constituting a capital felony, aggravated controlled substance felony or first degree felony. [TFC 54.01(q)(1)]
6. 15 working days after initial hearing, including subsequent hearings and waivers, if no petition filed in case where child is alleged to have engaged in conduct other than above, or a violation of probation. [TFC 54.01(q)(2)]

g. Conditional release:

1. Child may be released under requirements reasonably necessary to insure child's appearance at later proceedings, but must be in writing and a copy furnished to the child. [TFC 54.01(f)]
2. If child expelled from school, shall require that child attend juvenile justice alternative education program in counties with population greater than 125,000. [TFC 54.01(f)]

**VI. DETENTION HEARING BEFORE THE COURT (STATUS OFFENDER/NONOFFENDER):**

a. Time:

Before the 24<sup>th</sup> hour after arrival, excluding weekends and holidays. [TFC 54.011(a)]

b. Detention warranted:

1. Probable cause to believe child violated a valid court order; [TFC 54.011(b)(1)] and
2. Detention justified under TFC 54.01(e)(1), (2) or (3). [TFC 54.011(b)(2)]

c. Duration of detention order:

1. Initial period of 72 hours, excluding weekends/holidays. [TFC 54.011(b)]
2. One additional period of 72 hours, excluding weekends/holidays, on finding of good cause. [TFC 54.011(c)]
3. Up to ten days on demand of child's attorney to prepare for adjudication hearing. [TFC 54.011(d)]
4. Status offender may be detained for up to five days in order to return child home in another state. [TFC 54.011(e)]

## **VII. REQUEST FOR SHELTER:**

A child in custody may be detained for up to 10 days without a hearing, if:

- a. Not later than the next working day after being taken into custody, the child voluntarily makes a written request for shelter pending transportation to his/her residence in another state. [TFC 54.01(i)] The request may be signed without the concurrence of an adult. [TFC 54.01(k)]
- b. The request contains:
  1. A statement that the child voluntarily agrees to submit himself/herself to detention for not more than 10 days without a hearing. [TFC 54.01(i)(2)(A)]
  2. An allegation by the detainer that child has left his place of residence in another state or country or county of this state, is in of shelter and that arrangements are being made for transportation home. [TFC 54.01(i)(2)(B)]
  3. A statement by the detainer that the child has been advised of his or her right to a detention hearing. [TFC 54.01(i)(2)(C)]
  4. A juvenile judge must sign the request. [TFC 54.01(i)(2)(D)]
- c. The request may be revoked by the child at any time. [TFC 54.01(j)]

IN THE 65TH DISTRICT COURT  
OF EL PASO COUNTY, TEXAS  
A DESIGNATED JUVENILE COURT

IN THE MATTER OF:

)  
)

No.:

DOB: DETENTION ORDER

A Detention Hearing was held on this date and after the evidence was heard and considered, the Judge finds:

That the Court has jurisdiction; that the juvenile, his/her attorney, his/her parent(s)/guardian(s)/custodian(s), if present, have been informed of the reasons why the juvenile was taken into custody, the nature of the Detention Hearing, the right of the juvenile to be represented at every stage of the proceedings by counsel, the right to remain silent.

Detention is warranted because:

1.  The juvenile is likely to abscond or be removed from the jurisdiction of the Court:
  - a.  The child has a history of running away;
  - b.  The parent(s) has threatened to remove the child from the jurisdiction of the Court;
  - c.  Other:
2.  Suitable supervision, care, or protection is not being provided for the juvenile by a parent, guardian, custodian, or other person:
  - a.  The parent(s)/guardian(s) lack(s) sufficient parenting skills to provide adequate supervision;
  - b.  Due to illness, infirmity, or advanced age of the parent(s)/guardian(s), the child does not receive adequate supervision;
  - c.  Adequate clothing, food, or shelter is not being provided for the child;
  - d.  The parent's/guardian's confirmed substance abuse puts the child at risk;
  - e.  The parent's/guardian's confirmed involvement in criminal activities puts the child at risk;
  - f.  Other: \_\_\_\_\_
3.  The juvenile has no parent, guardian, custodian, or other person able to return the juvenile to the Court when required:
  - a.  The parent(s)/guardian(s) can not be located;
  - b.  The parent(s)/guardian(s) has no means of transportation to return the child to the Court;
  - c.  The parent(s)/guardian(s) refuse(s) to abide by the deferred prosecution agreement;
  - d.  The parent(s)/guardian(s) refuse(s) to cooperate with the orders of the Court;
  - e.  Other: \_\_\_\_\_
4.  The juvenile may be dangerous to him/herself or may threaten the safety of the public if released:
  - a.  The child has *suicidal ideations* or has previously *attempted suicide*;
  - b.  The child has a history of *self-mutilation*;
  - c.  The child has a history of aggression towards others;
  - d.  Other: \_\_\_\_\_
5.  The juvenile has previously been found to be a delinquent child or has previously been convicted of a penal offense punishable by a term in jail or prison and is likely to commit an offense if released:
  - a.  The child is currently on Probation/Parole;
  - b.  The child is a known gang member, claims gang affiliation, or associates with gang members;
  - c.  The child has indicated he/she has intentions of engaging in further delinquent conduct.
  - d.  Other: \_\_\_\_\_
6.  The juvenile is alleged to have used, possessed, or exhibited a firearm, as defined by Section 46.01, Penal Code, in the commission of the offense.
7.  The juvenile is **ORDERED** detained at:
  - a.  Juvenile Detention Home; Support Fees: \$
  - b.  Other:
8.  The juvenile's parent(s)/guardian(s) \_\_\_\_\_ shall be financially responsible for damages incurred by the juvenile to the property of El Paso County Juvenile Detention Center.
9.  The parents shall participate in the El Paso Independent School District Parenting Program to include participation in their child's educational program.

DETENTION ORDER

10.  The Court finds that it is in the best interest of the child and of the community for the child to be placed outside his/her home. The Court further finds that the child has been removed from his/her home and the Court approves the removal.
11.  **IT IS, THEREFORE, THE ORDER OF THIS COURT** that the child be detained in the El Paso County Juvenile Detention Center and remain there until the conclusion of a Disposition Hearing or until further order of the Juvenile Court, but in no event shall this Order be effective for more than ten (10) days without further proceedings under Section 54.01 of the Texas Family Code.
12.  **IT IS FURTHER ORDERED** that the El Paso County Juvenile Probation Department be responsible for the child's placement, care, and control.
13.  **IT IS ORDERED** that the Juvenile Probation Department file a request for **Petition/Modification** on or before the \_\_\_day of \_\_\_\_\_, 200\_\_\_\_\_, and the County Attorney is **ORDERED** to file a **Petition/Modification** based on delinquent conduct / violation of probation before the day of \_\_\_\_\_, 200\_\_\_\_\_.
14.  Case is set for **Other:** \_\_\_\_\_ **Pre-Trial/Modification** Hearing on the \_\_\_day of \_\_\_\_\_, 200\_\_\_\_ at \_\_\_\_\_ o'clock    A. / P. .M.

**NOTICE OF HEARING**

To juvenile and parent(s) / guardian(s), and to their attorney of record:

**YOU ARE REQUIRED TO BE PRESENT AT THE ABOVE SCHEDULED HEARING AS SET IN  
PARAGRAPH #14**

This **ORDER** is **NOTICE** that this cause has been set for a **HEARING** by Court in the 65<sup>th</sup> District Court of El Paso County, Texas, at the  
 **El Paso County Juvenile Probation Department** at 6400 Delta Drive in El Paso, Texas 79905; or  
 **El Paso County Courthouse** at 500 E. San Antonio Street, Room 1105, El Paso, Texas 79901.

\_\_\_\_\_  
Parent(s) / Guardian(s) of Juvenile

\_\_\_\_\_  
Attorney for Juvenile

Juvenile

- Copy of this Order is given to the juvenile.  
 Parent(s) is/are **ORDERED** to employ counsel for the juvenile immediately.

**SIGNED AND ENTERED** this the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_.

\_\_\_\_\_  
JUVENILE COURT REFEREE

**SIGNED AND RATIFIED** this the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_.

\_\_\_\_\_  
JUDGE