

DETENTION HEARINGS

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Speaker Biography

Michael C. O'Brien is a prosecutor with Dallas County District Attorney's Office and is currently assigned to the 305th District Court. Mr. O'Brien has been with the D.A.'s office for nine years (seven of which have been as a juvenile prosecutor). Prior to joining the D.A.'s office, he practiced law in the private sector as a family law attorney for Raggio and Raggio law firm. Mr. O'Brien has taught classes on juvenile law at Dallas County Community College and volunteered for the Texas Young Lawyers Association on juvenile-related matters. Additionally, he has been asked to speak on many occasions to attorneys on juvenile law and train felony and misdemeanor prosecutors.

Mr. O'Brien holds a Bachelor of Business degree in Marketing from the University of Texas in Austin, Texas and a Doctor of Jurisprudence from St. Mary's Law School in San Antonio, Texas. Mr. O'Brien became board certified in juvenile law in 2003.

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with additions and updates
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DETENTION HEARINGS

1. What type of referral?

- A. Delinquent Conduct/Conduct Indicating a Need for Supervision/Probation Violation [51.03(a)/51.03(b)]
- B. Status Offender/Nonoffender [51.02(15)/51.02(8)]

2. When is a Detention Hearing Required?

- A. 53.02 mandates administrative release of a person if:
 - 1. The person is not a child [53.01(b)], or
 - 2. There is no probable cause that the child committed an offense [53.01(b)], or
 - 3. None of the five detention criteria is met:
 - a. Likely to abscond or be removed from the jurisdiction of the court, or
 - b. Suitable supervision, case, or protection is not being provided by a parent, guardian, custodian, or other person, or
 - c. No parent, guardian, custodian, or other person is able to return the child to court when required, or
 - d. May be dangerous to himself or may threaten the safety of the public, or
 - e. Has previously been found to be a delinquent child or previously been convicted of a penal offense punishable by a term in jail or prison and is likely to commit an offense if released [53.02(b)].
- B. Administrative release can be conditioned by requirements necessary to insure the child's later appearance in court [53.02(a)].
 - 1. If the child is expelled under 37.007 of the Education Code, conditions of release must include attend the Juvenile Justice Alternative Education Program if in a county where a JJAEP is required [53.02(e)].
 - 2. Adult must agree to jurisdiction of the court and be subject to contempt for failure to return the child to court [54.01(a)].
- C. A child who is "alleged to have engaged in delinquent conduct to have used or exhibited a firearm . . . in the commission of the offense *SHALL* be detained until the child is released at the direction" of a judge [53.02(f)].
 - 1. Police are permitted to contact a judge for authorization to release, which can be done by telephone. Any judicial officer may authorize release of a child taken into custody for an offense involving a firearm.
 - 2. If a child is taken into custody for a firearms offense and not released by judicial order, the police must transport that child to the county's designated place of juvenile detention. However, the legislature did provide for the needs of rural counties that might have difficulties complying with this mandatory detention provision [51.12(l)].

3. Time Frame for Conducting Initial Detention Hearing

- A. Delinquent Conduct/Conduct Indicating a Need for Supervision/Probation Violation - Second working day after the child is taken into custody, or first working day if child is detained on a Friday or Saturday [54.01(a)].
- B. Status Offender/Nonoffender – 24 hours after the child’s arrival at the detention facility, excluding weekends and holidays [54.011(a)].

4. Notice Requirements

- A. Before detention hearing, reasonable notice (oral or written) of the time, place, and purpose of the hearing must be given to the child and, if they can be found, to the child’s parent, guardian, or custodian [54.01(b)].
- B. At the detention hearing, the court must give notice of:
 - 1. Right to counsel, including appointed counsel if eligible [54.01(b)], and
 - 2. Right to remain silent [54.01(b)], and
 - 3. Inadmissibility of any statement at subsequent hearings [54.01(g)].
- C. At the detention hearing, court must appoint an attorney or guardian ad litem if no parents or guardian is present [54.01(d)].
- D. If referee is conducting the detention hearing, the referee must notify the parties of the right to a juvenile court judge or substitute judge [54.10(a)].
- E. Before the detention hearing, the child’s attorney has the right to access to all written material to be considered by the court [54.01(c)].

5. Presiding Judicial Officer

- A. In each county, the juvenile board must designate at least one district, criminal district, domestic relations, juvenile, county court, or county court at law as the juvenile court [51.04(b)].
- B. If the constitutional county court is designated as the juvenile court, at least one other court must be designated as a juvenile court [51.04(c)].
- C. If the judge of the designated juvenile court is not an attorney, an alternate juvenile court must be designated whose judge is an attorney [51.04(d)].
- D. If the judge of the designated juvenile court and the judge of the alternate juvenile court are unavailable, a substitute judge may conduct the detention hearing [51.04(f)].
 - 1. Substitute judge may be any magistrate as defined in the Code of Criminal Procedure, Article 2.09.
- E. A referee may be appointed to conduct detention hearings [51.04(g), 54.01 (l), 54.011(a), 54.10(a)].
 - 1. Parties must waive designated juvenile court judge or substitute judge [54.01(l), 54.10(a)].

2. If not waived, designated juvenile court judge or substitute judge must conduct the detention hearing with 24 hours [54.01(l)].

6. Detention Hearing

A. Evidence:

1. Probable cause can be determined from reasonable reliable information without regard to its admissibility under the Rules of Criminal Evidence [54.01(o)].
2. Reasons to detain may be determined from witness testimony or written reports from probation officers, professional court employees, and professional consultants [54.01(c)].

B. Finding of probable cause must be made at the initial detention hearing unless:

1. The child was taken into custody under an arrest warrant or directive to apprehend [54.01(o)], or
2. A judicial officer has previously made the determination within 48 hours of the child being taken into custody [54.01(o)].

C. There is a legal presumption to release the child unless one of the five factors is found [54.01(e)].

D. Status Offender/Nonoffender shall be released from secure detention at all detention hearings until a disposition is completed, then, if there is probable cause that the child has violated the disposition order, detention is permitted for 72 hours (excluding weekends and holidays) if one of the three factors is found [54.011(b)].

1. One 72 hour extension (excluding weekends and holidays) of this detention is permitted on a finding of good cause by the court [54.011(c)].
2. The child's attorney may demand an extension of the detention for up to ten days to allow preparation for an adjudication hearing [54.011(d)].
3. An out of state status offender may be detained up to five days to enable the child's return to the home state [54.011(e)]. Cf. 60.002, Article IV.

E. Family Code requires that the petition be filed "as promptly as practicable," but does not require that a petition be filed before the detention hearing is held [53.04(a)].

1. The prosecutor has 15 or 30 working days (depending upon the offense) after the initial detention hearing in which to file a petition when the child is detained. Thirty working days, if the offense is a capital murder, first degree offense or aggravated controlled substance felony. Fifteen working days for all other offenses [54.01(q)].
2. The juvenile board may impose an earlier deadline than the specified deadlines for filing petitions and may specify the consequences of not filing a petition by the deadline specified by the juvenile board [54.01(q-1)].

7. Conditions of Release [54.01(f)]

A. Release may be conditioned on requirements reasonably necessary to insure the child's appearance at later proceedings.

- B. If the child had been expelled under 37.007 of the Education Code, release must be conditioned on the child's attending the JJAEP in a county where a JJAEP is mandated.
- C. The conditions must be in writing and a copy given to the child
- D. The parent/guardian may be ordered to assist the juvenile in complying with the conditions of release. These orders are enforceable under new Chapter 61 [54.01].

8. Duration of orders and waiver of hearings

- A. An initial detention order is valid for up to ten working days [54.01(h)].
- B. Subsequent detention orders are valid for ten working days, except in a county without a certified juvenile detention facility in which case each subsequent order is valid for 15 working days [54.01(h)].
- C. A child may not waive the initial detention hearing but each subsequent hearing may be waived, pursuant to Section 51.09 [51.04(h)].
- D. If there is a failure to hold a subsequent hearing for a detained child, the child must show some prejudice as a result of the illegal detention. There is no remedy for the illegal detention except seeking release on a writ of habeas corpus or filing a civil lawsuit for money damages.

9. Request for Shelter

- A. A child from out of county, state or country may be detained for up to ten days without a hearing if a written request for shelter is voluntarily executed by the child within one working day after the child was taken into custody [54.01(i)].
 - 1. The request must include a statement by the child that the child agrees to be detained for up to ten days without a hearing.
 - 2. The request must include a statement by the person detaining the child that the child has left his out of county residence, that the child needs shelter, that effort is being made to return the child to the child's residence, and that the child has been advised of the right to demand a detention hearing.
 - 3. The request must be signed by the juvenile court judge.
 - 4. The request may be revoked at any time and a detention hearing held not later than the next working day. [54.01(j)].
 - 5. No adult is needed to co-sign the request for shelter [54.01(k)]. Cf. 60.002, Article VI.

10. Findings and Recommendations

- A. Referee must transmit written findings and recommendations to the juvenile court judge or substitute judge [54.01(l), 54.10(b)].
- B. The juvenile court judge or substitute judge may adopt, modify, or reject the referee's recommendations not later than the next working day after receiving them. Failure to act within that time results in the release of the child by operation of law [54.01(l), 54.10(b)].

- C. A referee's recommendation to release results in the immediate release of the child subject to the power of the juvenile court judge or substitute judge to modify or reject the recommendation [54.01(l)].
- D. An attorney appointed to represent a child who was detained without presence of counsel may request a de novo detention hearing not later than ten working days after the attorney was appointed. The de novo hearing must be held not later than the second working day after a formal request is filed [54.01(n)].

11. Penalty for Detaining Nonoffender

- A. A nonoffender who has been taken into custody may not be detained in a secured or correctional facility.
- B. A nonoffender who is illegally detained under this subsection may file civil suit for compensation against any person responsible for the illegal detention.
- C. It is a Class B misdemeanor to knowingly detain or assist in illegally detaining a nonoffender under this subsection [54.011(f)].