

## Determinate Sentence: Release and Transfer Hearings

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## Texas Family Code §54.11

- TYC is responsible for requesting a hearing if they seek to release or transfer a youth who has not yet served the minimum length of stay.
- Referral procedure falls under Human Resources Code §61.079(a).
- Youth must be at least 16 years old.

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## Duties of the Juvenile Court

- Upon receipt of TYC's request for the hearing, the court shall :
- Set a time and place for the hearing.
- Notify the parties of the time and place of the hearing.
- Hearing must be held no later than 60 days after TYC referral received.

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### Who are the Necessary Parties?

- Youth who is subject to transfer
- Parents or guardian
- TYC
- Prosecutor
- Victim or family of victim
- Any other person who has filed a written request with the court to be notified of a hearing

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### Rules Regarding Missing Parties

- [Except for Youth and Prosecutor],
- If one of the necessary parties cannot be found for notice ,
- And the record reflects that reasonable efforts were made to locate them,
- Failure to notify does NOT affect the validity of the hearing or determination.

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### Defects in Notice

- Defects cannot be forfeited by failure to object. *In re J.L.S., 47 S.W.3<sup>d</sup> 128 (Tex. App. - Waco 2001, no pet.)*
- Therefore, Prosecutors check the Hearing Notice!

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## Considerations for the Court

- Written reports from:
- Probation Officers,
- Professional court employees
- Professional consultants
- TYC employees, and
- Testimony from Witnesses

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## Written Reports

- Defense must be provided access all written matter to be considered by the court,
- AT LEAST one day in advance of hearing.
- Usually TYC records are voluminous.
- Make records available earlier if possible.
- Don't object if defense requests extra time to review documents and call witnesses.

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## Admissible Hearsay

- *Crawford v. Washington*, 541 U.S. 36 (2004) issues regarding right of confrontation of authors of written reports does not apply.
- Juvenile Transfer Hearings are considered revocation hearings rather than a stage of a criminal prosecution. *In re C.D.T.* 98 SW3d 280 (Tex. App.-Houston [1<sup>st</sup> Dist.] 2003, pet. denied)
- Transfer hearings are considered dispositional. *In re J.D.D.*, 2008 Tex. App. LEXIS 8657 (Tex. App. Dallas Nov. 18, 2008)

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### Minimum Period of Confinement for sentenced offenders in TYC

- Person must serve 1,2,3 or 10 years MPC for 3<sup>rd</sup>, 2<sup>nd</sup>, 1<sup>st</sup> degree felony and capital murder respectively and must meet other program requirements.
- Determinate Sentence Offenders must be transferred to TDCJ to serve balance of sentence on 19<sup>th</sup> B-day if person has not already been discharged or transferred.
- Person receives credit for all time served.

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### Procedure Before SB§103

- If person met minimum period of confinement (MPC), TYC could parole without approval of the court.
- If person did not meet MPC, TYC required to request Release/Transfer hearing from the court.
- Court could release to TYC or transfer to TDCJ-ID to serve balance of sentence.

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### Procedures After SB103 (2007)

- June 2007, TYC's maximum age changed from 21 to 19.
- Many serious offenders cannot meet their minimum period of confinement (MPC).
- TYC files request for Release/Transfer.
- Court has option of releasing to TDCJ parole (waiving MPC), or transferring (to TDJC-ID).

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### Factors the Court Considers

- Experiences and character of person before and after commitment
- Nature of the offense and manner it was committed
- Abilities of the person to contribute to society
- Protection of the victim and victim's family
- Recommendations of TYC and Prosecutor
- Best Interest of the Person
- Any other relevant factors

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### Court Dispo Options Under HRC §61.079(a) Transfer Request

- Request utilized by TYC for persons who are not complying with TYC programming and are disruptive.
- Court can transfer person to TDCJ for completion of sentence, or
- Court can return person to TYC.
- MPC is not relevant to this hearing.

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### Court Dispo Options under Transfer/Release Request

- Court may order the return of youth to TYC with approval for release under supervision, or
- Court may transfer child to TDCJ, or
- Court may return the youth without the approval for release (and child would age out of the juvenile system).

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Thank you!

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NO. CAUSE NUMBER

SID# SID

IN THE MATTER OF: § COURT DISTRICT COURT  
§ BEXAR COUNTY, TEXAS  
RESPONDENT'S NAME § SITTING AS A JUVENILE COURT

ORDER OF TRANSFER TO THE TEXAS DEPARTMENT  
OF CRIMINAL JUSTICE-INSTITUTIONAL DIVISION

I.

On the DATE day of MONTH, A.D., 20YEAR, personally appeared the Respondent, RESPONDENT'S NAME; his/her attorney, DEFENSE ATTORNEY'S NAME; his/her parent, PARENT OR GUARDIAN'S NAME; ADA NAME, the Prosecuting Attorney, for a Release/Transfer Hearing pursuant to Section 54.11 of the Texas Family Code; and all parties present announced ready for said hearing.

The Respondent and his/her attorney were then advised of the nature of the said hearing, the Respondent's privilege against self-incrimination, the Respondent's right to examine all witnesses against him/her, to present evidence and oral argument, and the Respondent's right to previous examination of all reports, evaluations and examinations relating to the Respondent's that may be used in the hearing.

II.

While hearing evidence at the proceeding, the Court took under consideration, among other matters, the following:

1. The experiences and character of the Respondent before and after commitment to the Texas Youth Commission;
2. The nature of the penal offense that the Respondent was found to have committed and the manner in which the offense(s) was committed;
3. The ability of Respondent to contribute to society;
4. The protection of the victim or any members of the victim's family;

5. Recommendations of the youth commission and prosecuting attorney;
6. The best interests of Respondent, and;
7. Any other factor relevant to the issue to be decided.

### III.

After careful consideration of all the evidence presented, and the Respondent's previous record, the Court finds the following:

1. An Order of Certification of Grand Jury approval was signed granting this District Court the authority to find a disposition of Determinate Sentencing.
2. At an adjudication hearing on HEARING DATE day of HEARING MONTH A.D., HEARING YEAR, Respondent was found to have engaged in Delinquent Conduct which occurred on OFFENSE DATE day of OFFENSE MONTH, A.D., OFFENSE YEAR, for an allegation that he/she violated Section CODE of the Texas Penal Code, OFFENSE; at a Disposition Hearing DISPOSITION DATE day of DISPOSITION MONTH, A.D., DISPOSITION YEAR, was sentenced to a determinate sentence of SENTENCED YEARS years and further ordered Respondent to be committed to the Texas Youth Commission.
3. A Release/Transfer Hearing was held by this District Court to determine the appropriateness and necessity of transferring Respondent to the Texas Department of Criminal Justice - Institutional Division for the remainder of his/her SENTENCED YEARS year sentence.
4. Respondent is a MALE/FEMALE child who was born on DATE OF BIRTH, and who is AGE years of age at the present time, who is presently in the custody of the Texas Youth Commission.



5. The proper notice requirements of Section 54.11 of the Texas Family Code have been satisfied, and proper notification of the parties that the hearing was for the purpose of a Release/Transfer Hearing were served on the Respondent's parent, his/her attorney, the family of the victim, the Texas Youth Commission, and the Respondent.
6. Prior to the hearing, the Court provided the attorney for the Respondent access to all written matter to be considered by the Court.
7. At the hearing, the Court considered written reports from the Texas Youth Commission, probation officers, professional court employees, in addition to the testimony of witnesses.
8. The Court considered the experience and character of this Respondent, both before and after his/her commitment to the Texas Youth Commission, and the evidence presented is clear that the Respondent is of sufficient intellectual abilities and sophistication to be committed at the Institutional Division of Texas Department of Criminal Justice.
9. The Court considered the nature of the penal offense.
10. The Court considered the manner in which the offense(s) was committed.
11. The Court considered the ability of Respondent to contribute to society.
12. The Court considered the protection of the victim and/or any member of the victim's family.
13. The court considered the recommendations of the Texas Youth Commission and the prosecuting attorney.
14. The Court is of the opinion that it is in the best interest of this Respondent, and of society that Respondent be placed in the custody of the Texas Department of Criminal Justice - Institutional Division for the remainder of his/her YEARS SENTENCED year sentence.

#### IV.

It is ORDERED by the COURT District Court of Bexar County, Texas, sitting as a Juvenile Court, that the said Respondent be TRANSFERRED immediately to the Texas Department of Criminal

Justice - Institutional Division to serve the remainder of his/her YEARS SENTENCED year sentence pursuant to Sections 53.045, 54.05 and 54.11 of the Texas Family Code.

The court finds that the Respondent has been in custody since CUSTODY DATE and should be granted credit towards his/her sentence from that date.

Respondent is hereby remanded to the custody of the Texas Youth Commission whereupon the said Respondent will be transferred from the custody of Texas Youth Commission to the Texas Department of Criminal Justice - Institutional Division.

On entry of the above and foregoing order, the Court instructed the attorney for the Respondent to advise RESPONDENT'S NAME and his/her parent, guardian, guardian ad litem of RESPONDENT'S NAME right to appeal, and RESPONDENT'S NAME right to appointment of an attorney for appeal if an attorney cannot be obtained because of indigency. The attorney was instructed that if RESPONDENT'S NAME, his/her parent, guardian, or guardian ad litem express a desire to appeal, the attorney shall file a notice of appeal with this Court and inform this Court whether or not he/she will handle the appeal.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 20YEAR

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THE HONORABLE PRESIDING JUDGE, JUDGE  
COURT JUDICIAL DISTRICT COURT  
BEXAR COUNTY, TEXAS

RELEASE/TRANSFER HEARING CHECKLIST  
( FROM TYC TO TDCJ)

**Practical Note:**

**Do not forget Transfer Order. Must be signed by Judge;  
Leonard Cuculo needs a certified copy to take with him.**

**Ask court to take JUDICIAL NOTICE of:**

At beginning of hearing:

- All evidence, findings, and judgments entered in underlying case
- Court's notice to DA, Respondent, Victims, Parent of Respondent  
If no, judicial notice parties are present and bench warrant for Respondent
- Other \_\_\_\_\_

At a later point:

- Summary Report
- Master File
- Security File
- Other \_\_\_\_\_

**Leonard Cuculo, TYC:**

Introduction of witness.

Summary Report written by L. Cuculo: Mark it, have him ID it.

What did you use to prepare this report?

What is the TYC number on the Summary Report?

Is that the same TYC number on the compiling information?

**OFFER SX1** (Summary Report)

Ask Court to take **JUDICIAL NOTICE** of Master File and Security File  
for TYC Number \_\_\_\_\_.

Have L. Cuculo ID the Respondent.

How old is R?

What was R committed to TYC for?

When was R committed?

For how long? Determinate Sentence.

When was the petition filed requesting this court to transfer R to TDCJ?

Is this hearing being conducted within **60 days** of the court's receipt of the request from TYC?

Was the R provided a **psychological evaluation** for the purposes of this hearing?

What is the purpose of the evaluation?

Who conducted the evaluation?

What were the results?

What is the **recommendation** of the examiner?

Is there any reason to believe the R lacks responsibility for R's conduct?

Is there any reason to believe the R's mental condition does not allow R to be held responsible for R's conduct?

Do you know what R's IQ is?

What has been R's **progress at TYC**?

Do you know what R's educational progress has been?

Do you know if R is cooperative with staff and instructors?

Do you know if R treats TYC staff with respect?

Do you know if R treats peers with respect?

Does R take responsibility for R's behavior?

What are **referrals**?

How many referrals has R had at TYC?

Over what period of time?

How many of them are for assault behavior or for being a danger to others?

What are the other referrals for?

What does it mean to be placed in **security**?

How many times was R placed in security?

Can you tell us how R behaved while in security?

**Discuss assaultive and gang-related referrals.**

Did TYC provide intervention or treatment for this behavior?

What are **Behavior Management Programs**?

What did R's treatment consist of?

Were plans implemented to **rehabilitate and re-socialize** R so that R could be released into society and be a productive citizen?

Were they successful?

Was R aware that R could be transferred to TDCJ?

Was R aware that R's potential transfer was dependent on R's performance at TYC, including completing all programs and having good behavior?

How was R made aware of this information?

Do you believe R understood these admonishments?

What are the different **phases of TYC**? (0-4)

Please explain these phases.

What phase is R in?

Has R ever been in a different phase?

How long did it take R to reach phase \_\_\_\_\_?

How long was R in phase \_\_\_\_\_?

Do you believe that R could successfully receive further treatment at TYC?

What is predicted if R were to be released into society today?

What is predicted if R were to continue at TYC today?

Is R a danger to staff and peers at TYC?

What is **TYC's recommendation** to the court today?

Is that also **your recommendation**?

**What is this recommendation based on?**