

## Dispositions, Modifications and Determinate Sentencing

24<sup>th</sup> Annual Juvenile Law Conference

February 21-23, 2011

**Riley N. Shaw**  
Assistant Criminal District Attorney  
Tarrant County, Texas

---

---

---

---

---

---

---

---

### Pre-filing Dispositions

- First Offender Programs
- Pre-trial Diversion Programs through other agencies (CPS/STAR, shelters, etc.)
- Pre-trial Diversion Programs through Juvenile Probation – Mediation, Drug and Mental Health programs, etc.
- Supervisory Caution and Deferred Prosecution by Juvenile Probation or local Prosecutor.

---

---

---

---

---

---

---

---

### Post-filing, but Pre-Trial Dispositions

- Prosecutor can dismiss/nonsuit case, Supervisory Caution case, divert child to a Pre-Trial Drug or Mental Health Diversion Program, or DPP case (not for DWI/ABC-related cases), etc.
- The Court can DPP case (not for DWI/ABC-related cases) at any time prior to:
  - swearing in of jury (jury trial), or
  - swearing of first witness (bench trial), or
  - pleading to petition/stipping to evidence (plea).

---

---

---

---

---

---

---

---

## Post-Trial Dispositions

- Adjudication vs. Disposition
  - only question at **adjudication** is whether the respondent engaged in the conduct as alleged in the petition.
  - only question at **disposition** is what to do with a respondent who has been adjudicated.
- Disposition not necessary unless specific finding made...

---

---

---

---

---

---

---

---

## Required Finding

- Either the **child is in need of rehabilitation** OR the **protection of the public or the child** requires that a disposition be made.
- If the court/jury does not so find, the court must dismiss the child and enter a final judgment without any final or formal disposition. §54.04(c).

---

---

---

---

---

---

---

---

## TFC 51.01 – Legislative Guidance regarding Dispositions

- to provide for the **protection of the public** and public safety;
- consistent with the protection of the public and public safety:
  - to promote the **concept of punishment** for criminal acts;
  - to **remove, where appropriate, the taint of criminality** from children committing certain unlawful acts; and
  - to **provide treatment, training, and rehabilitation** that emphasizes the accountability and responsibility of both the parent and the child for the child's conduct;
- to **provide for the care**, the protection, and the wholesome moral, mental, and physical development of children coming within its provisions;
- to **protect the welfare of the community** and to control the commission of unlawful acts by children;
- to achieve the foregoing purposes **in a family environment** whenever possible, separating the child from the child's parents only when necessary for the child's welfare or in the interest of public safety and when a child is removed from the child's family, to give the child the care that should be provided by parents

---

---

---

---

---

---

---

---

## TFC Chapter 59 – Further Legislative Guidance

### ■ PROGRESSIVE SANCTIONS

- Discretionary
- No longer required to report deviations
- Code now recognizes that deviation from the model in some cases is highly desirable. §59.001(5).

---

---

---

---

---

---

---

---

## The Hearing

- Shall be separate, distinct, and subsequent to the adjudication hearing. §54.04(a).
- Reversible Error - to permit prosecutor to argue to the jury during adjudication that it should adjudicate the respondent for her own good.

*In the Matter of C.L., 930 S.W.2d 935.*

---

---

---

---

---

---

---

---

## Judicial Discretion

- Court afforded wide discretion to act.
- Cannot be arbitrary or unreasonable:
  - A judge acts arbitrarily or unreasonably if a ruling is made without reference to guiding rules or principals. *In the Matter of T.K.E., 5 S.W.3d 782.*

---

---

---

---

---

---

---

---

## Right to Jury

- In **ordinary delinquency** cases and CINS cases, there is **no right to a jury** at the disposition hearing.
- The **right to a jury** for disposition exists **only** where the child is in jeopardy of a **determinate sentence**. §54.04(a).

---

---

---

---

---

---

---

---

## Evidence

- The **Court** may consider written reports from probation officers, professional court employees, or professional consultants, in addition to the testimony of witnesses. §54.04(b).
- Report can include: social/family history, school history, psychological or psychiatric evaluations, other prior juvenile records, etc.
- Written report **NOT** considered hearsay.

---

---

---

---

---

---

---

---

## State's Written Material

- Child's attorney is entitled to review all written material which is to be considered in disposition *prior to* the hearing.
- The trial court may properly consider such reports, even if defense counsel failed to read them, so long as they were provided access to them prior to the hearing.
- **Jury** may not consider written report.

---

---

---

---

---

---

---

---

## Defense Written Material

- No requirement that State be afforded opportunity to review prior to hearing.
- Consider providing to probation for inclusion in social history report.

---

---

---

---

---

---

---

---

## Other Evidence

- Evidence from Adjudication hearing:
  - Need not formally re-introduce.
- Restitution Evidence:
  - Normal rules of evidence apply, competent evidence is required.
- **NOT** Lack of Responsibility:
  - Lack of responsibility is adjudication issue, but...
  - Mental illness/mental retardation could be disposition issue.

---

---

---

---

---

---

---

---

## Unadjudicated Conduct

- A child may:
  - (1) admit having engaged in delinquent conduct or conduct indicating a need for supervision for which the child has not been adjudicated, and
  - (2) request the court to take the admitted conduct into account in the disposition of the child. §54.045(a).
- If the prosecuting attorney agrees in writing, the court may take the admitted conduct into account. §54.045(b).
  - This would bar further prosecution of the unadjudicated conduct.
  - But, be careful with unadjudicated conduct in another county over which exclusive venue lies in the other county. If dealing with another county, the court must obtain written permission from the prosecuting attorney for that county. §54.045(c).

---

---

---

---

---

---

---

---

### Dispositions Available

- No disposition
- Probation
- Probation with Placement Outside Home
- Transfer to Criminal (Adult) Court for probation supervision
- Confinement in TYC
- Transfer to TDCJ-ID or TDCJ-parole

---

---

---

---

---

---

---

---

### Probation Term

- Term of probation may be for any period, except that probation may not continue on or after the child's 18th birthday (but see Determinate Sentence exceptions, post).
- A minimum probation period of two years is applicable to sexual offenses punishable as a felony. §54.04(p).

---

---

---

---

---

---

---

---

### Probation Conditions

- Must be written and provided to the child. §54.04(f).
- Two primary limitations upon the court's discretion in setting the conditions of probation:
  - (1) the vagueness doctrine, and
  - (2) the prohibition on delegating to others the court's authority to set the conditions.

*In the Matter of R.A.B.*, 525 S.W.2d 892.  
*K.K.B. v. State*, 609 S.W.2d 824.

---

---

---

---

---

---

---

---

## Typical Conditions

- Attend School
- Pay court costs and probation fees
- No contact with victim or with person who contributed to delinquency
- Counseling – child and persons in household
- Community Service
  - May excuse for good cause or physical/mental issues

---

---

---

---

---

---

---

---

## Handgun Offense Conditions

- Handgun offenses:
  - Not later than the 30th day after the date the court places the child on probation, the child is required to notify the probation officer the manner in which the child acquired the handgun, including the date and place of and any person involved in the acquisition.
  - Probation must give this information to law enforcement.
  - Use immunity is given to the child for this info.

---

---

---

---

---

---

---

---

## Other Offense-specific Conditions

- Sexual offenses
  - Sex Offender Treatment *may* be ordered, including polygraphs.
  - Parents may be ordered to participate and attend other special classes.
- Graffiti offenses
  - Conditions may include restitution, restoration or classes related to self-responsibility and empathy.

---

---

---

---

---

---

---

---

## Other Offense-specific Conditions

- Alcohol Violations
  - Community service must be related to education about or prevention of misuse of alcohol.
- Animal Cruelty offenses
  - Requires psychological counseling for a period to be determined by the court.
- Desecrating Cemetery/Abuse Corpse
  - Requires restitution.
  - If child is financially unable, community service in lieu or parents pay restitution.

---

---

---

---

---

---

---

---

## Drivers License Suspensions

- **Graffiti statute violations** – court may (**discretionary**) order suspension or deny issuance of license or permit for **up to 365 days on a first offense or for 365 days for a subsequent offense.**
- **Drugs/Alcohol** – DWI; vehicular assault; manufacture, sale, delivery, possession, transportation or use of alcoholic beverage; use, possession, sale, delivery, or manufacture of a controlled substance, a dangerous drug, or a volatile chemical – **court shall (mandatory)** order suspension or deny issuance for **period of 365 days.**
- **Any adjudication or probation violation** – **court may (discretionary)** order suspension or deny issuance for a period **not to exceed 12 months** if the court finds the child engaged in delinquent conduct or conduct in need of supervision, other than conduct otherwise specifically described (alcohol, graffiti, drugs).
- A child whose license is suspended may apply for an occupational license, if otherwise eligible.

---

---

---

---

---

---

---

---

## Placement Outside of Home

- Required finding by the **court or jury** that the child cannot be provided the quality of care and level of support and supervision that the child needs to meet the conditions of probation in the child's home. §54.04(c).
- Required finding by **court** that:
  - (A) it is in the child's best interests to be placed outside the child's home;
  - (B) reasonable efforts were made to prevent or eliminate the need for the child's removal from the home and to make it possible for the child to return to the child's home; **and**
  - (C) the child, in the child's home, cannot be provided the quality of care and level of support and supervision that the child needs to meet the conditions of probation. §54.04(i).
- Evidence must be sufficient to support these findings.

---

---

---

---

---

---

---

---



## TYC

- Indeterminate Commitment or Determinate Commitment
- Must be **Felony offense**
- Commitment to TYC transfers jurisdiction to TYC exclusively (some limitations if Determinate Sentence)

---

---

---

---

---

---

---

---

## TYC

- Commitment cannot extend beyond 19<sup>th</sup> birthday (except for commitments prior to 6/6/07, *and* except for Determinate Sentences).
- Minimum Lengths of Stay (Indeterminate) and Minimum Periods of Confinement (Determinate).
- TYC decides when to release (unfettered discretion if Indeterminate, some limitations if Determinate).

---

---

---

---

---

---

---

---

## Modification Hearing

- Any disposition, except a commitment to TYC, may be modified by the juvenile court until the child reaches his 18th birthday or the child is earlier discharged by the court or operation of law (limited exception for transfers of D/S probations and transfers to TDCJ).
- Except for commitment to TYC, all dispositions automatically terminate when the child reaches his 18th birthday (limited exception for transferred D/S probations). §54.05.

---

---

---

---

---

---

---

---

### Modifications

- No right to jury at modification.
- Modification hearing shall be held on the petition of the child and his parent, guardian, guardian ad litem, or attorney, or on the petition of the state, a probation officer, or the court itself.
- Reasonable notice of a hearing to modify disposition shall be given to all parties. §54.04(d).
  - Reasonable notice presumed absent objection.
- Juvenile may waive hearing except when facing confinement greater than 30 days.

---

---

---

---

---

---

---

---

### Modifications

- Two-step process:
  - First, the court must determine whether or not the child violated a condition of probation.
  - Second, if the court found a violation, the court must determine what to do about the violation.
- The above requirement of a probation violation is only applicable if a TYC commitment is being sought. Otherwise, the Court can modify for any reason, not just a probation violation.

---

---

---

---

---

---

---

---

### Petition to Modify

- The code does not specify what must be included in a petition to modify disposition.
- The petition to modify should articulate the conditions of probation the child is alleged to have violated and the manner and means in which the child is alleged to have acted in the violation (if a TYC commitment is being sought).
- Petition may be amended after filing.
- Petition to modify disposition is similar to a motion to revoke probation in adult cases. *In the Matter of R.A.B.*, 525 S.W.2d 892.

---

---

---

---

---

---

---

---

### Modifications

- The evidentiary standard for a modification for a TYC commitment is by a preponderance of the evidence (that the child violated a reasonable and lawful order of the court).
- Modification may be based upon a plea of true.
- Court shall specify its reasons for modifying the disposition and shall furnish a copy of the order to the child.

---

---

---

---

---

---

---

---

### Modifications

- Probation can be revoked for failure to pay restitution only if the probationer had the ability to pay and deliberately refused to do so.
- The burden is on the probationer to prove by a preponderance that she did not have the ability to make the payments as required.

*In the Matter of M.H., 662 S.W.2d 764.*

---

---

---

---

---

---

---

---

### Modifications

- If the term of probation will expire before the 18th birthday (or later, if Determinate), the probation may be extended.
- A motion or petition must be filed seeking extension before the probation term expires, otherwise, the court loses jurisdiction to modify. §54.05(l).

---

---

---

---

---

---

---

---

### Modifications

- A hearing shall be held prior to placement in a post-adjudication secure correctional facility for a period longer than 30 days or commitment to TYC as a modified disposition. §54.05(h).
- A hearing requesting or resulting in secure placement may not be waived and requires counsel.

---

---

---

---

---

---

---

---

### Modifications

- Cannot modify a CINS probation for placement at TYC.
- Cannot modify a MISDEMEANOR probation for placement at TYC.
- ONLY a Felony offense probation can be modified to send a child to TYC.

---

---

---

---

---

---

---

---

### Determinate Sentencing

- What is it?
  - Provides expanded punishment options for certain felony offenses – bridging the gap between normal delinquency proceedings and waiver of jurisdiction and transfer to criminal court. Sometimes referred to as “blended sentencing.”
  - Found in TFC Sec. 53.045, entitled Violent or Habitual Offenders.

---

---

---

---

---

---

---

---

## Determinate Sentencing

- Requires grand jury approval or WAIVER (waiver must comply with TFC 51.09 – *In re A.R.A.*, 898 S.W.2d 14, 15-16 (Tex.App.-Austin 1995, no writ)).
- No age restrictions are specified in the determinate sentencing statutes; therefore, the general age requirements under the TFC apply (it covers acts committed age 10 through 16).

---

---

---

---

---

---

---

---

## Violent Offenders

- The “violent” offenses are currently found at TFC Sec. 53.045(a)(1)-(17) and include:
  - murder, capital murder, manslaughter,
  - aggravated kidnapping, sexual assault, aggravated sexual assault,
  - aggravated assault, aggravated robbery,

---

---

---

---

---

---

---

---

## Violent Offenders

- injury to a child, elderly individual, or disabled individual (if the offense is punishable as a felony, other than a state jail felony),
- felony deadly conduct involving discharging a firearm,
- certain offenses involving controlled substances, criminal solicitation, indecency with a child, criminal solicitation of a minor,

---

---

---

---

---

---

---

---

**Violent Offenders**

- criminal attempt (if the offense attempted was murder, capital murder, or a “3g” offense under Article 42.12 of the Code of Criminal Procedure),
- arson (if bodily injury or death is involved),
- intoxication manslaughter, and
- conspiracy to commit any of the above offenses.

---

---

---

---

---

---

---

---

**Violent Offenders**

- EXCEPTION (see TFC 53.045(e)) – when the Respondent and his/her victim are three years or less apart in age, the prosecutor cannot proceed with a determinate sentence for:
  - Sexual Assault under PC 22.011(a)(2) – consensual sexual contact with a child; or
  - Aggravated Sexual Assault under PC 22.021(a)(1)(B) and (2)(B) – consensual sexual contact with a child under 14.

---

---

---

---

---

---

---

---

**Habitual Offenders**

- Habitual Felony Conduct (as defined in TFC Sec. 51.031) essentially means a child who has:
  - two final prior felony adjudications (“final” meaning probation or TYC, and all appeals exhausted)
  - that were in sequence, and
  - that became final BEFORE the child committed the new non-state jail felony offense.
- NOTE – An adjudication based on conduct that occurred before January 1, 1996 cannot be considered (TFC 51.031(c)).

---

---

---

---

---

---

---

---

**D/S Procedure  
TFC 53.045(a)**

- The decision to seek a determinate sentence is completely within the discretion of the prosecutor.
- Once that decision has been made, the prosecutor must draft and file a petition (in compliance with TFC 53.04 and 53.045) that alleges at least one of the listed “violent” offenses, or habitual felony conduct.
  - Non-covered offenses may also be alleged, but they will remain indeterminate.

---

---

---

---

---

---

---

---

**D/S Procedure – Grand Jury  
Approval – TFC 53.045(b)-(c)**

- The prosecutor must then present the petition to the grand jury for a vote:
  - This is done in the same manner as presentment of an indictment and requires a finding of probable cause and a vote of at least nine members to approve
  - The grand jury has its normal investigatory powers as in adult matters (can compel testimony, proceedings secret, etc.)

---

---

---

---

---

---

---

---

**D/S Procedure – Grand Jury  
Approval**

- NOTE - The grand jury cannot **indict** a child *unless* the juvenile court has transferred the child to criminal court (waived its jurisdiction and “certified” the child as an adult).
- Therefore, under a TFC 53.045 presentation, the grand jury is limited to approval or disapproval of the petition for determinate sentencing.

---

---

---

---

---

---

---

---

**D/S Procedure – Grand Jury Approval**

- If the grand jury fails to approve, then the prosecutor can:
  - Proceed with an ordinary delinquency petition, or
  - Re-present the petition to the same or a successor grand jury to seek approval (need new evidence), or
  - Seek “certification” of the child – waiver of jurisdiction and transfer to adult court.

---

---

---

---

---

---

---

---

**D/S Procedure – Grand Jury Approval**

- Note – a disapproval for determinate sentencing is DIFFERENT from a grand jury rejection after presentation for an Advisory Opinion under TFC 53.035(c) which actually *bars* filing a petition unless the same or a successor grand jury approves prosecution.
- Disapproval for determinate sentencing does NOT bar prosecution, rather it merely limits disposition to the indeterminate limits: probation until 18 or TYC until 19.

---

---

---

---

---

---

---

---

**D/S Procedure – Grand Jury Approval - TFC 53.045(d)**

- If the grand jury does approve the petition, the petition will be “returned” to the appropriate district court (like an indictment) and the approval must then be certified by the district clerk (in writing) and forwarded to the juvenile court where it must be entered in the record to take effect.
  - Note – for purposes of transfer of a child to TDCJ, a petition approved by the GJ is an indictment.

---

---

---

---

---

---

---

---



### **D/S Procedure – Waiver of Grand Jury Approval**

- A child and his/her attorney can waive approval by the grand jury, thereby allowing the case to go forward as a determinate sentence without presenting the petition to the grand jury
  - The waiver must be done in compliance with TFC 51.09
  - This is akin to waiver of indictment as set forth in CCP 1.141

---

---

---

---

---

---

---

---

### **Amending an Approved Petition**

- If the amendment is not “material” (ie, charging additional/different offenses, or otherwise prejudicing the child’s substantial rights), then no need to re-present to grand jury – but, practically speaking, most amendments made will be material, so the State should either:
  - Present an amended petition to the grand jury for approval, or
  - Obtain a waiver from the child and his/her attorney in compliance with TFC 51.09.

---

---

---

---

---

---

---

---

### **D/S Adjudication Hearings**

- Same formal requirements as an ordinary adjudication hearing, but CANNOT be heard by referee/master [per TFC 54.10(e)].
- Cannot be heard by Constitutional County Court per TFC 51.04(c) – must have another court designated to hear D/S cases (district, criminal district, family district/domestic relations, county court at law, etc.).

---

---

---

---

---

---

---

---

**Jury Trials – Adjudication  
TFC 54.03**

- The child has a right to a trial by jury. TFC 54.03(c).
- May waive jury in accordance with TFC 51.09.
- In a bench trial, the Judge cannot view the social history prior to conclusion of adjudication hearing. Jury can never see it. TFC 54.03(d).

---

---

---

---

---

---

---

---

**Jury Trials – Adjudication  
TFC 54.03**

- Must be a jury of 12 and be selected in accordance with the requirements in criminal cases (TFC 54.03(c)).
- Peremptory Challenges – 10 per side unless multiple respondents, in which case each respondent gets 6, and the state gets 6 per respondent (CCP 35.15(b)).

---

---

---

---

---

---

---

---

**Jury Trials – Adjudication  
TFC 54.03**

- The verdict must be unanimous by proof beyond a reasonable doubt based on evidence that is material, relevant and competent. TFC 54.03(c)-(d).
- Judge or jury must find for the State on at least one covered offense in order to have a D/S disposition.

---

---

---

---

---

---

---

---

**D/S Disposition Hearings  
TFC 54.04**

- The child has a right to a jury at the disposition hearing, but only if the child requests jury disposition in writing prior to commencement of voir dire – and can only change election thereafter with consent of the prosecutor. TFC 54.04(a).
- Exception – for conduct prior to September 1, 2007, the child does not have to elect judge/jury punishment until after adjudication. See former TFC 54.04(a).
- Right to jury can also be waived in accordance with TFC 51.09.

---

---

---

---

---

---

---

---

**D/S Disposition Hearings  
Evidence - TFC 54.04**

- Jury may not be given a social history report (it is only admissible in judge disposition).
- Unadjudicated extraneous offenses are NOT admissible in jury disposition for offenses prior to September 1, 2007. *In Re C.J.M.*, 167 S.W.3d 892, 894-95 (Tex.App.-Ft. Worth 2005).
- For offenses committed on or after September 1, 2007, the legislature has made unadjudicated extraneous offenses admissible in accordance with CCP 37.07. *See* TFC 51.17(c).

---

---

---

---

---

---

---

---

**D/S Disposition Hearings  
Findings - TFC 54.04**

- Deadly Weapon findings –
  - State must give notice of intent to seek DW finding prior to adjudication. Can do so by:
    - Alleging a DW offense
    - Alleging a homicide, or
    - By sending notice of intent to Defense Counsel.
  - It is a special issue that must be proven beyond a reasonable doubt.

---

---

---

---

---

---

---

---

**D/S Disposition Hearings  
Findings - TFC 54.04**

- Requires *personal use* of the DW by the Respondent. *In the Matter of A.F.*, 895 S.W.2d 481, 486 (Tex.App.-Austin, no writ).
- Must include DW finding in the Court's dispositional order, and specify whether it was a firearm. TFC 54.04(g).
- Should include a finding regarding amount of time already served (for credit towards sentence) in all commitment orders after June 8, 2007 pursuant to TFC 54.052.

---

---

---

---

---

---

---

---

**D/S Disposition Findings  
TFC 54.04(c)**

- As in normal adjudication situations, there must first be a finding that the child is in need of rehabilitation or the protection of the public or the child requires that disposition be made (TFC 54.04(c)).
- This finding must be made for both probation and TYC commitments.

---

---

---

---

---

---

---

---

**D/S Disposition Options**

- No disposition necessary, or
- Probation (with possible transfer to criminal court for completion of term), or
- Commitment to TYC (with possible transfer to TDCJ).

---

---

---

---

---

---

---

---

**D/S Punishment Ranges  
TFC 54.04(d)(3)**

- Capital felony, 1<sup>st</sup> degree felony and aggravated controlled substance felony – 40 year maximum
- 2<sup>nd</sup> degree felony – 20 year maximum
- 3<sup>rd</sup> degree felony – 10 year maximum

---

---

---

---

---

---

---

---

**D/S Probation  
TFC 54.04(q)**

- If judge/jury assesses punishment of 10 years or less, then judge/jury can probate for a period not to exceed 10 years.
- Judge determines length of probation.
- Prior to expiration, the judge may extend a probation for any period of time not to exceed a total probationary period of 10 years.

---

---

---

---

---

---

---

---

**D/S Probation  
TFC 54.04(q)**

- No minimum length (except for certain sex offenses), so judge can discharge child at any time.
- If probation revoked, judge can lower sentence, but may not raise it. TFC 54.05(j).
- Probation begins in juvenile system and automatically expires on child's 18<sup>th</sup> birthday, unless previously transferred to criminal court.

---

---

---

---

---

---

---

---

**D/S Probation Transfer  
TFC 54.051**

- Initiated on Motion of the State
- No probation violation needed
- Must be heard prior to 18<sup>th</sup> birthday (NOTE – there is an exception under TFC 51.0412)
- Same procedures as a TFC 54.05 Modification hearing
- If transferred, occurs on 18<sup>th</sup> birthday
- If not transferred, court specifies a discharge date (on or before 18<sup>th</sup> birthday)

---

---

---

---

---

---

---

---

**D/S Probation Transfer  
TFC 54.051**

- If transferred, child is placed on Community Supervision for balance of sentence under terms consistent with juvenile court order.
- Probation time in juvenile system counts toward early discharge minimums under CCP 42.12(20).
- Once transferred, the Criminal Court disposes of probation violations, including juvenile violations not discovered prior to child's 18<sup>th</sup> birthday.

---

---

---

---

---

---

---

---

**D/S Probation Transfer  
TFC 54.051**

- Sex offender registration authority transfers to the criminal court regarding continued deferral of registration and/or excusing further compliance
- No right to a jury
- Decision not subject to attack on appeal

---

---

---

---

---

---

---

---

**D/S Probation Transfer  
TFC 54.051**

- Child's obligation to pay restitution transfers with the probation. TFC 54.041(h).
- Parent's obligation to pay restitution does not transfer (thus expiring on child's 18<sup>th</sup> birthday).
- CCP 42.12, Sec. 3g restrictions on probation do NOT apply, and CCP 42.12, Sec. 3(b) minimum periods of supervision do NOT apply. TFC 54.051(e-1).

---

---

---

---

---

---

---

---

**Probation Revocation/Hearing to  
Modify Disposition – TFC 54.05**

- No right to a jury for D/S revocations for offenses committed on or after September 1, 1999.
- There is a right to a jury for offenses committed prior to September 1, 1999.

---

---

---

---

---

---

---

---

**Probation Revocation/Hearing to  
Modify Disposition – TFC 54.05**

- Same procedures as revocation of indeterminate probation.
- Upon revocation, the court can impose any sentence, up to the original sentence.
- For revocation of a probation that has been transferred to criminal court – the criminal court can impose any sentence, up to the original sentence – and is NOT subject to the minimum sentences set forth in the CCP.

---

---

---

---

---

---

---

---

### D/S TYC Commitments

- Judge or Jury, as appropriate, determines length of sentence – up to 10, 20 or 40 years, depending on the offense.
- There is no minimum sentence length.
- Child begins sentence in TYC, with possibility of transfer to TDCJ for completion of sentence.

---

---

---

---

---

---

---

---

### D/S Minimum Lengths of Stay

- TYC is authorized (per HRC 61.081(f)) to release a child to parole, without court approval, at any time after the child has completed his/her minimum length of stay, as follows:
  - 10 years – capital murder
  - 3 years – 1<sup>st</sup> degree felonies and agg. c/s felonies
  - 2 years – 2<sup>nd</sup> degree felonies
  - 1 year – 3<sup>rd</sup> degree felonies

---

---

---

---

---

---

---

---

### D/S Minimum Lengths of Stay

- Exceptions:
  - For offenses committed on or after September 1, 2005, TYC is authorized to release a child to parole, without court approval, at any time during the last nine months of the child's sentence. HRC 61.081(i).
  - TYC may petition the Juvenile Court for early release of the child under supervision prior to expiration of the MLS. TFC 54.11.

---

---

---

---

---

---

---

---



### **Terminating TYC Control**

- Completion of sentence by child.
- Petition to juvenile court by TYC requesting transfer of the child to TDCJ, if granted by court. TFC 54.11.
- Automatic transfer of child to TDCJ parole at Child's 19<sup>th</sup> birthday. HRC 61.084(g).

---

---

---

---

---

---

---

---

### **TYC to TDCJ Transfers TFC 54.11**

- At any time after child's 16<sup>th</sup> birthday (and before the child's 19<sup>th</sup> birthday), TYC can petition the Juvenile Court to transfer the child to TDCJ (prison) to serve the balance of his/her sentence, but only if the child has not completed his/her sentence AND the child's conduct warrants such transfer for the welfare of the community. See also HRC 61.079(a).
- Court retains jurisdiction to do so even if the child is now 18. See TFC 51.0411.

---

---

---

---

---

---

---

---

### **TYC to TDCJ Transfer Hearings Procedure - TFC 54.11**

- Hearing initiated by request from TYC and the decision to seek transfer is in TYC's discretion.
- Hearing must be held within 60 days of receipt of request.
- The court can either return the child to TYC or transfer him/her to TDCJ for the balance of the sentence.

---

---

---

---

---

---

---

---

**TYC to TDCJ Transfer Hearings  
Procedure - TFC 54.11**

- Can have a transfer hearing following revocation of parole (but not while on parole). HRC 61.079(c).
- Must give notice of hearing to all persons listed in TFC 54.11(b)(1)-(6). However, failure to give notice to anyone other than the child and the prosecutor will NOT affect the validity of the hearing if those persons whereabouts are unknown and reasonable efforts were made to locate them.

---

---

---

---

---

---

---

---

**TYC to TDCJ Transfer Hearings  
Procedure - TFC 54.11**

- Child is entitled to an attorney (retained or appointed).
- TYC is represented by the local prosecutor.
- Court must appoint a GAL if parent/guardian doesn't appear. TFC 51.11.
- No right to a jury.

---

---

---

---

---

---

---

---

**TYC to TDCJ Transfer Hearings  
Procedure - TFC 54.11**

- Child's attorney can examine witnesses, present evidence, and argue.
- Child and attorney entitled to previous examination of all reports, evaluations and examinations of child to be used in hearing.

---

---

---

---

---

---

---

---

**TYC to TDCJ Transfer Hearings  
Procedure - TFC 54.11**

- Court can consider written reports from:
  - Probation officers
  - Professional court employees
  - Professional consultants
  - Employees of TYC
  
- Court can also consider witness testimony.

---

---

---

---

---

---

---

---

**TYC to TDCJ Transfer Hearings  
Procedure - TFC 54.11**

- Child's attorney entitled to access to all written matter to be considered by the Court – at least one day prior to the hearing.
  
- Indigent child is entitled to appointment of mental health expert under Due Process if makes required showing to justify the appointment. *In Re J.E.H.*, 972 S.W.2d 928, 929-30 (Tex.App.-Beaumont, 1998).

---

---

---

---

---

---

---

---

**TYC to TDCJ Transfer Hearings  
Procedure - TFC 54.11**

- Hearing is open to the public unless waived by child with consent of his/her attorney and the court. TFC 54.11(f).
  
- Hearing must be recorded by a court reporter or by audio or video – and record must be retained for 2 years. TFC 54.11(g).

---

---

---

---

---

---

---

---

**TYC to TDCJ Transfer Hearings  
Procedure - TFC 54.11**

- Criteria to be considered by the Court:
  - The experiences and character of the child, both before and after commitment to TYC
  - The nature of the committing offense
  - The manner in which the offense was committed

---

---

---

---

---

---

---

---

**TYC to TDCJ Transfer Hearings  
Procedure - TFC 54.11**

- The ability of the child to contribute to society
- The protection of the victim/victim's family
- The recommendations of TYC and prosecutor
- The best interest of the child....and anything else relevant.

---

---

---

---

---

---

---

---

**TYC to TDCJ Transfer Hearings  
Procedure - TFC 54.11**

- There is no requirement for findings of fact or conclusions of law.
- The decision is appealable under TFC 56.01(c)(2), but it is an abuse of discretion standard. The appeal does not suspend the order or release the child (unless the juvenile court orders release), although appellate court can set bond.

---

---

---

---

---

---

---

---

**Automatic Transfer to TDCJ Parole  
HRC 61.084(g)**

- A child who has not completed his/her sentence AND has not been either paroled or transferred prior to his/her 19<sup>th</sup> birthday shall be transferred by TYC to TDCJ parole on the child's 19<sup>th</sup> birthday to serve the remainder of his/her sentence.

---

---

---

---

---

---

---

---

**Early Release Before Satisfying  
Minimum Lengths of Stay**

- An early release hearing is authorized under TFC 54.11 (Release or Transfer Hearing). It allows TYC to petition the Court for release of a child on parole prior to completing the statutory MLS.
  - Basically an incentive/reward for the child to participate and do well in the program at TYC.
- Works the same way as a transfer hearing.
- Decision is NOT appealable.

---

---

---

---

---

---

---

---

**Parole**

- If paroled from TYC prior to age 19, parole begins on TYC parole and automatically transfers to TDCJ parole at age 19 if entire sentence has not been served. HRC 61.084(g).
- TYC cannot discharge from parole unless entire sentence served (HRC 61.084).
- Adult parole time = original sentence, less time in TYC AND less time in detention AND less time on TYC parole.

---

---

---

---

---

---

---

---

## Parole

- If transferred to adult parole, the adult parole revocation procedures apply.
- If revoked after transfer to adult parole, the child may be required to serve out remainder of sentence in TDCJ. In any event, the child cannot be returned to TYC after transfer.

---

---

---

---

---

---

---

---

## Questions?

[rshaw@tarrantcounty.com](mailto:rshaw@tarrantcounty.com)

---

---

---

---

---

---

---

---