

## APPLICABLE STATUTES

Determinate sentence transfer hearings are governed by the following statutes:

### **Texas Family Code ' 54.11. Release or Transfer Hearing**

(a) On receipt of a referral under Section 61.079(a), Human Resources Code, for the transfer to the institutional division of the Texas Department of Criminal Justice of a person committed to the Texas Youth Commission under Section 54.04(d)(3), 54.04(m), or 54.05(f), or on receipt of a request by the commission under Section 61.081(g), Human Resources Code, for approval of the release under supervision of a person committed to the commission under Section 54.04(d)(3), 54.04(m), or 54.05(f), the court shall set a time and place for a hearing on the release of the person.

(b) The court shall notify the following of the time and place of the hearing:

- (1) the person to be transferred or released under supervision;
- (2) the parents of the person;
- (3) any legal custodian of the person, including the Texas Youth Commission;
- (4) the office of the prosecuting attorney that represented the state in the juvenile delinquency proceedings;
- (5) the victim of the offense that was included in the delinquent conduct that was a ground for the disposition, or a member of the victim's family; and
- (6) any other person who has filed a written request with the court to be notified of a release hearing with respect to the person to be transferred or released under supervision.

(c) Except for the person to be transferred or released under supervision and the prosecuting attorney, the failure to notify a person listed in Subsection (b) of this section does not affect the validity of a hearing conducted or determination made under this section if the record in the case reflects that the whereabouts of the persons who did not receive notice were unknown to the court and a reasonable effort was made by the court to locate those persons.

(d) At a hearing under this section the court may consider written reports from probation officers, professional court employees, professional consultants, or employees of the Texas Youth Commission, in addition to the testimony of witnesses. At least one day before the hearing, the court shall provide the attorney for the person to be transferred or released under supervision with access to all written matter to be considered by the court.

(e) At the hearing, the person to be transferred or released under supervision is entitled to an attorney, to examine all witnesses against him, to present evidence and oral argument, and to previous examination of all reports on and evaluations and examinations of or relating to him that may be used in the hearing.

(f) A hearing under this section is open to the public unless the person to be transferred or released under supervision waives a public hearing with the consent of his attorney and the court.

(g) A hearing under this section must be recorded by a court reporter or by audio or video tape recording, and the record of the hearing must be retained by the court for at least two years after the date of the final determination on the transfer or release of the person by the court.

(h) The hearing on a person who is referred for transfer under Section 61.079(a), Human Resources Code, shall be held not later than the 60th day after the date the court receives the referral.

(i) On conclusion of the hearing on a person who is referred for transfer under Section 61.079(a), Human Resources Code, the court may order:

(1) the return of the person to the Texas Youth Commission; or

(2) the transfer of the person to the custody of the institutional division of the Texas Department of Criminal Justice for the completion of the person's sentence.

(j) On conclusion of the hearing on a person who is referred for release under supervision under Section 61.081(f), Human Resources Code, the court may order the return of the person to the Texas Youth Commission:

(1) with approval for the release of the person under supervision; or

(2) without approval for the release of the person under supervision.

(k) In making a determination under this section, the court may consider the experiences and character of the person before and after commitment to the youth commission, the nature of the penal offense that the person was found to have committed and the manner in which the offense was committed, the abilities of the person to contribute to society, the protection of the victim of the offense or any member of the victim's family, the recommendations of the youth commission and prosecuting attorney, the best interests of the person, and any other factor relevant to the issue to be decided.

#### **Texas Human Resources Code ' 61.079. Referral of Violent and Habitual Offenders for Transfer**

(a) After a child sentenced to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, becomes 16 years of age but before the child becomes 21 years of age, the commission may refer the child to the juvenile court that entered the order of commitment for approval of the child's transfer to the institutional division of the Texas Department of Criminal Justice if:

(1) the child has not completed the sentence; and

(2) the child's conduct, regardless of whether the child was released under supervision under Section 61.081, indicates that the welfare of the community requires the transfer.

(b) The commission shall cooperate with the court on any proceeding on the transfer of the child.

(c) If a child is released under supervision, a determination under Section 61.075(4) revoking the child's release under supervision is required before referral of the child to the juvenile court under Subsection (a).

## **Texas Human Resources Code ' 61.081. Release Under Supervision**

(a) The commission may release under supervision any child in its custody and place the child in his or her home or in any situation or family approved by the commission. Prior to placing a child in his or her home, the commission shall evaluate the home setting to determine the level of supervision and quality of care that is available in the home.

(b) Subject to legislative appropriation, the commission may employ parole officers to investigate, place, supervise, and direct the activities of a parolee to ensure the parolee's adjustment to society in accordance with the rules adopted by the commission.

(c) Parole officers may work with local organizations, clubs, and agencies to formulate plans and procedures for the prevention of juvenile delinquency.

(d) The commission may resume the care and custody of any child released under supervision at any time before the final discharge of the child.

(e) Not later than 10 days before the day the commission releases a child under this section, the commission shall give notice of the release to the juvenile court and the office of the prosecuting attorney of the county in which the adjudication that the child engaged in delinquent conduct was made.

(f) If a child is committed to the commission under a determinate sentence under Section 54.04(d)(3), Section 54.04(m), or Section 54.05(f), Family Code, the commission may not release the child under supervision without approval of the juvenile court that entered the order of commitment unless the child has served at least:

(1) 10 years, if the child was sentenced to commitment for conduct constituting capital murder;

(2) 3 years, if the child was sentenced to commitment for conduct constituting an aggravated controlled substance felony or a felony of the first degree;

(3) 2 years, if the child was sentenced to commitment for conduct constituting a felony of the second degree; or

(4) 1 year, if the child was sentenced to commitment for conduct constituting a felony of the third degree.

(g) The commission may request the approval of the court under this section at any time.

(h) If the commission finds that a child has violated an order under which the child is released under supervision, on notice by any reasonable method to all persons affected, the commission may order the child:

(1) to return to an institution;

(2) if the violation resulted in property damage or personal injury:

(A) to make full or partial restitution to the victim of the offense; or

(B) if the child is financially unable to make full or partial restitution, to perform services for a charitable or educational institution; or

(3) to comply with any other conditions the commission considers appropriate.

## **Texas Human Resources Code ' 61.084. Termination of Control**

(a) Except as provided by Subsections (b) and (c), if a person is committed to the commission under a determinate sentence under Section 54.04(d)(3), Section 54.04(m), or Section 54.05(f), Family Code, the commission may not discharge the person from its custody.

(b) The commission shall discharge without a court hearing a person committed to it for a determinate sentence under Section 54.04(d)(3), Section 54.04(m), or Section 54.05(f), Family Code, who has not been transferred to the institutional division of the Texas Department of Criminal Justice under a court order on the date that the time spent by the person in detention in connection with the committing case plus the time spent at the Texas Youth Commission under the order of commitment equals the period of the sentence.

(c) The commission shall transfer to the institutional division of the Texas Department of Criminal Justice a person who is the subject of an order under Section 54.11(i)(2), Family Code, transferring the person to the custody of the institutional division of the Texas Department of Criminal Justice for the completion of the person's sentence.

(d) The commission shall transfer a person sentenced under a determinate sentence to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, for delinquent conduct constituting the offense of capital murder to the institutional division of the Texas Department of Criminal Justice on the person's 21st birthday to serve the remainder of the sentence if the person has not:

(1) served at least 10 years of the person's sentence; or

(2) been transferred or released under supervision by court order.

(e) Except as provided by Subsection (d), (f), or (g), the commission shall discharge from its custody a person not already discharged on the person's 21st birthday.

(f) The commission shall transfer a person who has been sentenced under a determinate sentence to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, or who has been returned to the commission under Section 54.11(i)(1), Family Code, to the custody of the pardons and paroles division of the Texas Department of Criminal Justice to serve the remainder of the person's sentence on parole as provided by Section 508.156, Government Code, when the person is released under supervision after becoming 19 years of age.

(g) The commission shall transfer a person who has been sentenced under a determinate sentence to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, or who has been returned to the commission under Section 54.11(i)(1), Family Code, to the custody of the pardons and paroles division of the Texas Department of Criminal Justice on the person's 21st birthday, if the person has not already been discharged or transferred, to serve the remainder of the person's sentence on parole as provided by Section 508.156, Government Code.

## **Texas Human Resources Code ' 61.0841. Determinate Sentence Parole**

(a) Not later than the 90th day before the date the commission transfers a person to the custody of the pardons and paroles division of the Texas Department of Criminal Justice for release on parole under Section 61.081(f) or 61.084(f) or (g), the commission shall submit to the department all pertinent information relating to the person, including:

- (1) the juvenile court judgment;
- (2) the circumstances of the person's offense;
- (3) the person's previous social history and juvenile court records;
- (4) the person's physical and mental health record;
- (5) a record of the person's conduct, employment history, and attitude while committed to the commission;
- (6) a record of the sentence time served by the person at the commission and in a juvenile detention facility in connection with the conduct for which the person was adjudicated; and
- (7) any written comments or information provided by the commission, local officials, or victims of the offense.

(b) The commission shall provide instruction for parole officers of the pardons and paroles division relating to juvenile programs at the commission. The commission and the pardons and paroles division shall enter into a memorandum of understanding relating to the administration of this subsection.

## **Texas Government Code ' 499.053. Transfers From Texas Youth Commission**

(a) The institutional division shall accept persons transferred to the division from the Texas Youth Commission under Section 61.084, Human Resources Code.

(b) A person transferred to the institutional division from the Texas Youth Commission is entitled to credit on the person's sentence for the time served in the custody of the youth commission.

(c) All laws relating to good conduct time and eligibility for release on parole or mandatory supervision apply to a person transferred to the institutional division by the youth commission as if the time the person was detained in a detention facility and the time the person served in the custody of the youth commission was time served in the custody of the division.

(d) A person transferred from the Texas Youth Commission for the offense of capital murder shall become eligible for parole as provided in Section 508.145(d) for an offense listed in Section 3g, Article 42.12, Code of Criminal Procedure, or an offense for which a deadly weapon finding has been made.

## **Texas Government Code ' 508.156. Determinate Sentence Parole**

- (a) Before the release of a person who is transferred under Section 61.081(f) or 61.084(f) or (g), Human Resources Code, to the division for release on parole, a parole panel shall review the person's records and may interview the person or any other person the panel considers necessary to determine the conditions of parole. The panel may impose any reasonable condition of parole on the person that the panel may impose on an adult inmate under this chapter.
- (b) The panel shall furnish the person with a written statement clearly describing the conditions and rules of parole. The person must accept and sign the statement as a precondition to release on parole.
- (c) While on parole, the person remains in the legal custody of the state and shall comply with the conditions of parole ordered by a panel under this section.
- (d) The period of parole for a person released on parole under this section is the term for which the person was sentenced less calendar time served at the Texas Youth Commission and in a juvenile detention facility in connection with the conduct for which the person was adjudicated.
- (e) If a parole panel revokes the person's parole, the panel may require the person to serve the remaining portion of the person's sentence in the institutional division. The remaining portion of the person's sentence is computed without credit for the time from the date of the person's release to the date of revocation. The panel may not recommit the person to the Texas Youth Commission.
- (f) For purposes of this chapter, a person released from the Texas Youth Commission on parole under this section is considered to have been convicted of the offense for which the person has been adjudicated.

## TRANSFER HEARING CHECK LIST

1. COURT RECEIVES TYC LETTER REQUESTING T/F HEARING
2. CALL TYC REPRESENTATIVE RE: AVAILABILITY FOR HEARING
3. REQUEST THE COURT TO APPOINT ATTORNEY
4. REVIEW AVAILABLE HEARING DATES WITH ATTORNEY
5. SET HEARING (MUST BE W/I 60 DAYS OF DATE REQUEST REC-~~D~~)
6. BENCH WARRANT FOR RESPONDENT (CC: ATTY, TYC, JPO)
7. NOTIFICATION LETTER TO ATTORNEY
8. NOTIFICATION LETTER TO PARENT/GUARDIAN/CUSTODIAN
9. NOTIFY VICTIM/VICTIM-S FAMILY OR OTHER CONCERNED PARTY
10. NOTIFY TYC SCHOOL SUPERINTENDENT
11. DETERMINE & CONFIRM BUSINESS RECORDS DEADLINE W/TYC REP  
(MUST BE FILED A MINIMUM OF 14 DAYS BEFORE HEARING)
12. DELIVER COPY OF TYC REPORT & BUSINESS RECORDS TO ATTORNEY
13. REVIEW TYC REPORT & RECORDS
14. PREPARE TRIAL NOTEBOOK (INCLUDES CASELAW)
15. SUBPOENA NECESSARY WITNESSES
16. LETTER TO ATTORNEY RE: COORDINATING HIS SUBPOENAS
17. MEET WITH WITNESSES
18. PREPARE ORDER
19. MARK EXHIBITS (TYC REPORT, VICTIM IMPACT,...)
20. HEARING
21. FINALIZE ORDER
22. FAX COPY OF SIGNED ORDER TO TYC REP
23. ARRANGE TRANSPORT BACK TO TYC OR TDCJID

## APPLICABLE CASELAW

### Procedural Time Frames

The requirement that the transfer hearing must be held within a certain time frame has been construed by the Austin Court of Appeals to mean that the hearing must begin by the specified time frame, not that it be concluded. The Court specifically discusses pre-1995 time frames in C.L., 874 S.W. 2d 880, (Tex. App- Austin 1994).

### Statutory Hearsay Exception

Written reports from juvenile employees, court employees and professional consultants may be considered by the court. ' 54.11(d) Tx. Fam. Code. In T.C.K., 877 S.W. 2d 43 (Tex. App. - Beaumont, 1994), the Court held this provides a statutory exception to a hearsay objection.

In C.D.R., 827 S.W. 2d 589, (Tex. App.- Houston [1<sup>st</sup> Dist.] 1992), the Court ruled that a TYC assistant superintendent was a professional consultant under ' 54.11 (d) and therefore, his report was admissible as an exception to the hearsay rule.

### Right to Confrontation

In J.M.O., 980 S.W. 2d 811 (Tex. App.- San Antonio 1998), the Court held that juvenile-s right to confront witnesses was not violated by admission of TYC report where attorney was provided with a copy of the report prior to the hearing and had the opportunity to call and cross-examine witnesses, but chose not to call witnesses.

However, in M.R., 5 S.W. 3d 879, (Tex. App-San Antonio 1999), the Court ruled that the failure to grant a continuance requested by the juvenile-s attorney to subpoena witnesses was a violation of the juvenile-s Sixth Amendment right to confrontation (atty appt-d Friday before Tuesday hearing).

### The Order

The transfer order does not have to address each factor of ' 54.11(j) and the Court may weigh each factor differently. C.L., 874 S.W. 2d 880 @ 887. In re R.G., 994 S.W. 2d 312 (Tex. App.- Houston[1st Dist.] 1999, pet. denied) concurs with the J.M.O. decision as it relates to the ' 54.11(j) factors.