

INTAKE

- Juvenile Probation Officers involved prior to court hearing
- **o** Gatekeeping functions:
 - Preliminary investigation -- is there a case to proceed further?
 - Decide to proceed non-judicially or seek court hearing
 - Make preliminary detain or release decision

PRELIMINARY INVESTIGATION

- ${\bf o}$ Who Conducts the Preliminary Investigation
- **o** Must answer Yes to these 2 questions, or immediately release from custody:
 - 1. Is the person a child?
 - 2. Is there probable cause to believe the child engaged in delinquent conduct or CINS?
- o Is child a "Non-offender"

TFC §53.01

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PRELIMINARY INVESTIGATION

o What information is reviewed?



Circumstances leading to referring agency to think a violation has occurred.

- Documents accompanying referral police report
- Identifying information on child
- Questioning child on offense Not a good idea.

TFC § 52.04(a)

PRELIMINARY INVESTIGATION

• Is person a child:

- As defined in Title 3 TFC
- Can base on police report
- Can question the child about age
- **o** What is Probable Cause?
 - Reasonable belief
 - Similar to probable cause grand jury finds when returning an indictment.

HANDLE INFORMALLY OR SEEK COURT HEARING?



- o Intake can route some cases to JPD for informal proceedings.
- Typically applies to non-violent misdemeanors and CINS cases.
- Informal proceedings =
 Supervisory Caution,
 Deferred Prosecution
- o Some Limitations on DP

TFC § 53.03

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NOTIFICATIONS

- o If detained, Intake Officer must tell parents, guardian or custodian the child's whereabouts and reason, unless notice has already been given.
- If a referral without the child being taken into custody, parent, guardian or custodian is notified.
- o Notice of Rights to Parents after referral, whether custodial or not.

TFC § 52.04; TFC § 53.01(c); TFC §62.102(a);

PROSECUTORIAL REVIEW



In some cases, Prosecutor must review the case.

- o Offenses that must be reviewed by Prosecutor:
 - Felonies
 - Misdemeanors involving violence to a person
 - Misdemeanors involving weapons
- ${\bf o}$ This is regardless of Intake Officer's probable cause determination.
- $\begin{array}{ccc} \textbf{o} \ \, \text{Cases reviewed by Prosecutor can vary by local} \\ \text{agreement, except murder cases.} & \text{\tiny TFC } \$53.01(d) \end{array}$

PROSECUTORIAL REVIEW



- Prosecutor reviews for "legal sufficiency and desirability of prosecution", and files petition.
- ${\bf o}$ If no probable cause, Prosecutor is to terminate proceedings.
- o If does not file for other reasons, Prosecutor is to refer to Department to be handled non-judicially, i.e. supervisory caution or deferred prosecution.
- o Prosecutor may defer prosecution. Generally would do so through JPD. But must sign and file with the court. ${}^{\text{TFC}\S 53.012; \, \text{TFC}\S 53.03(e)}$

INITIAL DETAIN OR RELEASE



- ${\bf o}$ Important Decision Point for Intake Officer
- Statutory Presumption Release.
- o A child may be detained prior to hearing only if:
 - 1. likely to abscond or be removed
 - 2. suitable supervision is not being provided
 - 3. no parent or other person able to return the child to court
 - 4. the child may be dangerous to him or herself, or threaten the safety of the public if released.
 - 5. the child has previously been found delinquent and is likely to commit an offense if released.

TFC8 53 020b

DETAIN OR RELEASE DECISION



- $oldsymbol{o}$ Mandated weapon
- ${\bf o}$ Consider all factors that bear on whether one of 5 criteria are met
 - Family dynamics
 - · School attendance
 - Referral history with the department
 - Check with Probation Officer if child is active with department
 - Other sources of information

TFC§ 53.02 (f)

6 HOUR RULE



- \boldsymbol{o} There are time constraints.
- o Must be admitted into secure detention immediately but no later than 6 hours from the time of entry. *TJJD standard 343.400*
- o Presents challenges when the child is not detained, and the parents do not arrive within the 6 hours.

IF RELEASE



- o Can release to a responsible adult.
- Adult has to agree to produce child at court.
- Court can impose conditions of release on child
 - In writing
 - Requirements must be reasonable necessary to ensure child's appearance at later proceedings.
- ${f o}$ If child is expelled, release must be conditioned on child attending JJAEP pending disposition of the case (counties over 125,000 pop.)

TFC §53.02 (a), (d)

IF DETAIN

- o Judicial determination of PC within 48 hours
- Intake officer must request Detention Hearing
- o Detention Hearing promptly
 - \bullet CINS before 24^{th} hour



- Delinquent Conduct •2nd working day
 - oFriday and Saturday first working day

TFC § 54.01; TFC § 54.011

DETENTION HEARING



- o Non-jury
- ${\bf o}$ Can be conducted by a referee.
- ${f o}$ Reasonable notice
- ${\bf o}$ Can proceed without parent; court to appoint guardian ad litem.
- $\ensuremath{\mathbf{o}}$ Right to counsel, but can proceed without an attorney.

DETENTION HEARING



- o Right to remain silent
- Statement made by child is not admissible against the child at any other hearing.
- o Presumption of release.
- Same 5 criteria as at initial detain release decision.

DETENTION HEARING



- Court can consider written reports from probation officers, professional court employees, professional consultants, and witnesses.
 - Child's attorney access to all written matter to prior to the hearing.
 - Court can order the attorney not to reveal items to the child or parent.

OUTCOME

- ${f o}$ Release may be include conditions, including attendance at JJAEP
- **o** Detain



- 10 working days (or 15)
- Can waive subsequent detention hearings
- If attorney appointed after initial hearing, can request de novo detention hearing within 2 days.

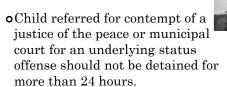
STATUS OFFENDERS



Restrictions on detaining in secure detention centers

- o Shall release at hearing
- o Exception -
 - if accused of violation of a "valid court order" = an adjudication in juvenile court for CINS offense.
 - 72 hours, and another 72
- Attorney can request the detention order be extended to prepare for adjudication hearing.
- o May be detained longer to enable return to home state under Chapter 60. $$_{\rm TFC\,54.011}$$

CONTEMPT OF COURT



• Practical problems – when parent does not arrive to pick up the child within the 6 hour time frame.

NON OFFENDERS



- A child who is not charged with committing an offense but either
 - has been taken into custody solely for deportation or
 - is subject to court's jurisdiction only under ANE statutes under Title 5 of the Family Code
- o Must be released at 24 hour hearing
- ${f o}$ Penalties for holding a Non-offender in a secure facility past 24 hours.

o TFC § 54.011

Court shall order release of child from detention if petition not filed timely. o 15 working days after initial detention hearing is held o 30 working days if alleged conduct constitutes capital felony, aggravated controlled substance felony, or felony of the first degree. THE END INTAKE & DETENTION HEARINGS Lynne Wilkerson February 2012