


**INTAKE &
DETENTION HEARINGS**
February 2012


INTAKE

- o 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

- 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

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



o 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.

o Typically applies to non-violent misdemeanors and CINS cases.

o Informal proceedings =
Supervisory Caution,
Deferred Prosecution

o Some Limitations on DP

TFC § 53.03



NOTIFICATIONS



- o If detained, Intake Officer must tell parents, guardian or custodian the child's whereabouts and reason, unless notice has already been given.
- o 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
- o This is regardless of Intake Officer's probable cause determination.
- o Cases reviewed by Prosecutor can vary by local agreement, except murder cases. TFC §53.01(d)



PROSECUTORIAL REVIEW



- o Prosecutor reviews for "legal sufficiency and desirability of prosecution", and files petition.
- 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. TFC§ 53.012; TFC§ 53.03(e)



INITIAL DETAIN OR RELEASE



- o Important Decision Point for Intake Officer
- o 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.

TFC§ 53.02(b)

DETAIN OR RELEASE DECISION



- o Mandated – weapon
- 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



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

IF RELEASE



- 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.
- 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

- Judicial determination of PC within 48 hours
- Intake officer must request Detention Hearing
- Detention Hearing promptly
 - CINS – before 24th hour
 - Delinquent Conduct
 - 2nd working day
 - Friday and Saturday – first working day



TFC § 54.01; TFC § 54.011



DETENTION HEARING



- Non-jury
- Can be conducted by a referee.
- Reasonable notice
- Can proceed without parent; court to appoint guardian ad litem.
- Right to counsel, but can proceed without an attorney.



DETENTION HEARING



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



DETENTION HEARING



- o 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

- 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

- Shall release at hearing
- 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.
- May be detained longer to enable return to home state under Chapter 60.

TFC 54.011

CONTEMPT OF COURT



- Child referred for contempt of a justice of the peace or municipal court for an underlying status offense should not be detained for more than 24 hours.
- 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
- Must be released at 24 hour hearing
- Penalties for holding a Non-offender in a secure facility past 24 hours.

TFC § 54.011

TIMELY PETITION REQUIRED



- o 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.

TFC § 54.01 (q)



THE END

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