

# Over 18 Proceedings in Juvenile Court

19<sup>th</sup> ANNUAL JUVENILE LAW CONFERENCE

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## Introduction

The juvenile justice system is defined, in part, by the age of the person who is the subject of the proceedings. Section 51.02(2) defines a child as a person who is ten years of age or older and under seventeen years of age, or one seventeen years of age or older and under eighteen years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

### ***I. Maximum Age of Court Control is eighteen.***

The general rule is that the juvenile court loses the power to adjudicate a charge when the respondent becomes 18 years of age. Sec.51.02(2). This implies that not only must the petition be filed before the respondent's eighteen birthday, but also that the adjudication hearing must be completed and the disposition must have occurred before the child's 18<sup>th</sup> birthday. *In re N.J.A.*, 997 S.W.2d 554(Tex. 1999).

However, Sec. 51.0412 modifies this rule. The court retains jurisdiction over a person, without regard to the age of the person, who is a respondent in an adjudication proceeding, a disposition proceeding or a proceeding to modify disposition, if:

- (1) the petition or motion to modify was filed while the respondent was younger than 18 years of age:
- (2) the proceeding is not complete before the respondent becomes 18 years of age and
- (3) the court enters a finding in the proceeding that the prosecuting attorney exercised due diligence in an attempt to complete the proceeding before the respondent became 18 years of age.

This changes the rule of N.J.A. to the extent that so long as the adjudication petition, modification petition, or modification motion was filed before the respondent became 18, the jurisdiction of the juvenile court is extended to the conclusion of those proceedings, if the prosecutor used due diligence in attempting to bring the proceedings to completion before the respondent became 18.

However, when the respondent has become 18 during the adjudication/disposition proceedings, the juvenile court could, if otherwise authorized by law, commit the child to the Texas Youth Commission on an indeterminate or determinate sentence. The court would not be authorized to grant regular probation since regular probation automatically ends when the child becomes 18. Sec 54.05(b).

The child could be placed on determinate sentence probation for up to ten years. Sec. 54.04(q), The juvenile court could in one order place the respondent on determinate sentence probation and transfer him or her to the criminal court for supervision by the Community Supervision and Corrections Department. Sec. 54.051(i). The juvenile court shall set the conditions of probation on a determinate sentence probation and immediately

transfer supervision of the person to the appropriate criminal court exercising jurisdiction under Sec. 54.051(e).

## **II. Persons eighteen years or older**

### **A. Appellate Reversal of Transfer Order**

If proceedings have been initiated in juvenile court to transfer a child to criminal court for prosecution as an adult, the power of the juvenile court continues until the transfer decision has been finally made even though the child may become 18 years of age in the meantime.

In *R.E.M. v State* 569 S.W.2d 613(Tex. Civ. App-Waco), a transfer petition was filed against the respondent for an offense committed just before his 17<sup>th</sup> birthday. Twice he was ordered transferred to criminal court and twice the juvenile court was reversed on appeal. When he was ordered transferred a 3<sup>rd</sup> time, the respondent was a few days short of his 20<sup>th</sup> birthday. He contended on appeal from his 3<sup>rd</sup> transfer order that the juvenile court had lost jurisdiction over him when he became 18 years of age, but the appellate court rejected that argument stating that:

“Once the jurisdiction of the juvenile court has been timely invoked by the filing of the petition for waiver of the court’s jurisdiction and transfer of the alleged offender to the district court for prosecution as an adult, the jurisdiction of the juvenile court continues until there has been a final disposition of the question of waiver of jurisdiction, whatever be the age of such alleged offender at the time of such disposition.”

This rule is especially important since the appeal of a transfer order is postponed until after a criminal conviction has occurred. Art.44.47(b).

### **Detention of Respondent 18 years of age or older after Appellate Reversal**

Section 51.041(b) provides that if the respondent is at least 18 years of age when the order of remand from the appellate court is received by the juvenile court, the juvenile court shall proceed as provided by Sections 54.02(o-r) for the detention of a person at least 18 years of age in discretionary transfer proceedings. Pending retrial of the adjudication or transfer proceedings, the juvenile court may:

- (1) order the respondent released from custody
- (2) order the respondent detained in a juvenile detention facility, or
- (3) set bond and order the respondent detained in a county adult facility, if bond is not made.

Section 51.041 permits the State, after appellate reversal of a juvenile court certification order, to proceed on the same petition in juvenile court on remand unless the ground for reversal were defect in the transfer petition, summons, or service of summons. However, Sec. 54.02(j)(4) authorizes the State to file a new certification petition if a previous transfer order was reversed by an appellate court or set aside by a district court.

## **B. Appellate Reversal of Adjudication Orders**

Section 56.01(g) provides that an appeal does not suspend the order of the juvenile court, nor does it release the child from the custody of that court or of the person, institution, or agency to whose care the child is committed, unless the juvenile court so orders. Thus, under this section, unless the juvenile court orders otherwise, the respondent should remain on probation supervision or continue in the custody of TYC while the appeal is pending. The respondent should be discharged from probation when he or she becomes 18 years of age and should be discharged from TYC when he or she becomes 21, whether or not there is an appeal pending at the time. If a respondent is adjudicated delinquent and committed to TYC and appeals the case and the appellate court reverses the adjudication of delinquency after the respondent becomes 18 years of age—the juvenile court retains jurisdiction but its dispositional powers are limited to dismissal or commitment to TYC and do not include non-determinate sentence probation.

## **C. Release/Transfer Hearings under the Determinate Sentence Act**

Section 54.11 of the Determinate Sentence statute applies to two distinct situations: whenever TYC is requesting juvenile court authority to transfer a sentenced youth to the Texas Department of Criminal Justice or TYC is requesting juvenile court authority to parole a youth before his or her statutory minimum length of stay has been served. In either case, the juvenile court may be required to conduct a release/transfer hearing concerning a person who is at the time of the hearing 18 years of age or older. Section 51.0411 grants the court jurisdiction to conduct such hearings.

## **D. Revoking Probation after child becomes eighteen**

If a child is on probation and violates it shortly before becoming 18 years of age, then as long as the motion to revoke is filed before his or her probation expires, the revocation hearing can occur after probation has expired. *In the Matter of R.G. 687 S.W.2d774(Tex. App—Amarillo1985)*. Section 51.0412 applies to extend the jurisdiction of the courts to make the child more fully accountable for his conduct while he is under the court's supervision.

## **E. Inability to File Timely for Transfer.**

A jurisdictional gap is created when a person commits an offense before his 17<sup>th</sup> birthday but the state is unable to file the charges until after his or her 18<sup>th</sup> birthday. Sections 54.02(j-l) were created to handle this situation. If the person is believed to have committed a capital, first degree or aggravated controlled substance felony while 14 years of age, or any felony while 15 or 16 years of age, the juvenile court may transfer him or her to criminal court even though the transfer petition is not filed until after the person becomes 18 years of age. But the juvenile court must find by a preponderance of evidence that:

- (a) for a reason beyond the control of the state, it was not practicable to proceed in juvenile court before the 18<sup>th</sup> birthday of the person or
- (b) after due diligence of the state it was not practicable to proceed in juvenile before the 18<sup>th</sup> birthday of the person because:

- (i) the state did not have probable cause to proceed in juvenile court and new evidence has been found since the 18<sup>th</sup> birthday of the person; or
- (ii) the person could not be found; or
- (iii) a previous transfer order was reversed by an appellate court or was set aside by a district court. Section 54.02(j)(4)

## **Special Rule for Murder and Capital Murder**

Section 54.02(j)(2) authorizes certification of a person who is 10 years of age or older and under 17 years of age at the time the person is alleged to have committed a capital felony or an offense under Sec. 19.02 of the Penal Code (murder). This language authorizes certification only for murder or capital murder and only if the person for whom certification is sought is already 18 years of age and the state justifies the delay in bringing certification proceedings under one of the four grounds set out in Sec. 54.02(j)(4). This particular section has become more useful with the use of DNA and the solving of many cold cases.

Penal Code Section 8.07(a)(7), also, authorizes the criminal court to process a certified case in which the juvenile committed a murder or capital murder while 10 to 14 years of age but could not be prosecuted until after he or she became 18.

## **Prior Void Criminal Proceedings**

In *In the Matter of D.M.* 611 S.W.<sup>2nd</sup> 880 (Tex. Civ. App.—Amarillo 1980), the state filed murder charges in criminal court without prior juvenile proceedings based on the respondent's statement to the police that he was 17 years of age at the time of the offense. Respondent was convicted of murder and while the jury was deliberating punishment, respondent revealed to his attorney that he was only 16 years of age at the time of the offense. Upon production of a birth certificate, the criminal charges were dismissed. A juvenile court then filed a transfer petition after age 18 for the same offense.

On appeal from the order transferring him to criminal court, respondent claimed that the juvenile court was without jurisdiction because he was 18 years of age at the time the transfer petition was filed. The appellate court rejected this argument based upon Sec. 54.02. And then the Court of Criminal Appeals in *Hoang v State*, 872 S.W. 2d. 694 (Tex. Crim. App.—1993) held that the double jeopardy clause does not prohibit transfer proceedings and re-prosecution of offenses when the defendant had been convicted of those offenses although younger than 17 at the time of the conduct and without prior juvenile proceedings. The prior convictions were void and posed no obstacle to post-eighteen year old transfer proceedings.

### **F. Persons Other Than the Juvenile**

A juvenile court has power over a person 18 years of age or older by virtue of special dispositional provisions dealing with persons other than the juvenile respondent. These powers include the following:

- (1) Section 54.06 authorizes the juvenile court to order parents or other financially responsible adults to pay the court support for a child placed outside the home.

- (2) Section 54.061 authorizes the court to hold parents or other adults responsible for payment of probation supervision fees.
- (3) Section 54.041(b) authorizes the juvenile court to order a parent to make restitution payments to the victim of the child's offense until the child becomes 18 years of age.
- (4) Section 54.041(a)(1) authorizes the juvenile court to order a person who has contributed to the child's delinquency to refrain from doing any act injurious to the welfare of the child.
- (5) Section 54.041(a)(2) authorizes the juvenile court to enjoin all contact between a person contributing to the delinquency of a child or the child.
- (6) Section 54.041(a)(3) authorizes the juvenile court to order any person living in the same household with the child to participate in social and psychological counseling to assist in the rehabilitation of the child and to strengthen the family's environment.
- (7) Section 54.044(b) authorizes the juvenile court to order a respondent's parent to perform community service with the child.

But in order for these provisions to apply, the child must be properly before the court and care must be taken in imposing orders on parents and other third parties to provide notice and opportunity to be heard to the person who will be placed under the court order.

CAUSE NO. JV- \_\_\_\_\_

IN THE INTEREST OF § IN THE COUNTY COURT AT LAW NO. 1  
§  
§ OF DENTON COUNTY, TEXAS  
§  
\_\_\_\_\_, Respondent § SITTING AS JUVENILE COURT

**MOTION TO SEAL RECORDS**

**TO THE HONORABLE JUDGE OF SAID COURT:**

COMES NOW the above-named Respondent, by and through his/her attorney of record, Kimberly McCary, and files this Motion to Seal Records and in support thereof would show unto the Court as follows:

Respondent stood charged with the offense(s) of “ \_\_\_\_\_”, alleged to have occurred in \_\_\_\_\_, Denton County, Texas, on or about \_\_\_\_\_.

**RESPONDENT’S IDENTIFIERS:**

Respondent’s full name: \_\_\_\_\_ Race: \_\_\_\_\_  
Date of birth: \_\_\_\_\_ Place of birth: \_\_\_\_\_  
SS#: \_\_\_\_\_ Sex: \_\_\_\_\_  
Texas DL or Identification Card #, if any: \_\_\_\_\_

Respondent was NOT adjudicated for a felony grade offense (which would require the Respondent to await his/her 21<sup>st</sup> birthday before requesting sealing relief.) Respondent has been finally discharged from his probation requirements in the above matter. Pursuant to §58.003(d) of the Texas Family Code, Respondent prays that this Court exercise its discretionary powers and immediately seal his/her records in the above case(s).

Respondent prays that the Court conduct hearing on Respondent’s Motion.

Respondent will serve the prosecuting attorney for the juvenile court; the authority granting the discharge if the final discharge was from an institution or from parole; the public or private agency or institution having custody of any records relating to this motion; and the law enforcement agency(s) having custody of any files or records relating to this motion with a copy of this motion and the notice of the hearing thereupon.

**WHEREFORE, PREMISES CONSIDERED**, Respondent requests that this Court grant his/her request and prays for all further relief to which he/she may be entitled.

Respectfully submitted,

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Kimberly McCary  
SBN 00787224  
P.O. Box 493  
Lewisville, TX 75067  
972/436-3574  
Fax No. 972/436-0122

**NOTICE OF HEARING**

A hearing on Respondent's Motion to Seal Records has been set for the \_\_\_\_ day of \_\_\_\_\_, 2006, at \_\_\_\_\_ in the County Court at Law #1 of Denton County, Texas, Sitting as a Juvenile Court.

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Kimberly McCary

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the above and foregoing was served on the following entities or agencies on \_\_\_\_\_, as follows:

Denton County District Attorney's Office via hand delivery  
Denton County Juvenile Probation Department via hand delivery  
The \_\_\_\_\_ Police Department via fax transmission  
The \_\_\_\_\_ Independent School District via fax  
Department of Public Safety via certified mail

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Kimberly McCary