

*The following was presented at the
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Petition, Summons and Service

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PETITION

Source of the Law: Texas Family Code, Section 53.04 of the Juvenile Justice Code.

I. Section 53.04(a) Court Petition; Answer. states a "...petition for adjudication or transfer hearing of a child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision may be made as PROMPTLY AS PRACTICABLE by a prosecuting attorney..."

- A. The proceedings shall be styled "In the matter of _____."
- B. The petition may be on information and belief.
- C. The petition must state:
 - 1. "With REASONABLE PARTICULARITY the time, place, and manner of the acts alleged and the penal law or standard of conduct allegedly violated by the acts;"
 - 2. The name, age, and residence address, if known, of the juvenile charged;
 - 3. The names and residence addresses, if known, of the parent, guardian, or custodian of the child and of the child's spouse, if any;
 - 4. If the child's parent, guardian, or custodian does not reside or cannot be found in the state, or if their places of residence are unknown, the petition must state:
 - a. the name and residence address of any known adult relative living in the county, or, if none,

b. The name and residence address of the known adult relative residing nearest to the court, and

5. If the child is alleged to have engaged in habitual felony conduct, the previous adjudications in which the child was found to have engaged in conduct violating penal laws of the grade of felony.

D. An oral or written answer to the petition may be made at or before the commencement of the hearing.

E. If there is no answer, a general denial of the alleged conduct is assumed.

II. In General

A. Petition and notice requirements of Sec. 53.04 to 53.07 must be satisfied in proceedings on petition for certification of juveniles for criminal prosecution as an adult. McBride v. State (App. 14 Dist. 1983) 655 S.W.2d 280.

B. Before court has authority to hold juvenile delinquency adjudication hearing, petition for adjudication hearing must be filed. Murphy v. State (App. 2 Dist. 1993) 860 S.W.2d 639.

C. While adult defendant has right to bail, juvenile defendant does not. In Matter of S.L.L. (App. 3 Dist. 1995) 906 S.W.2d 190.

III. Construction with other Law

A. Const. Art. 5, Sec. 12, governing form for adult criminal prosecutions, does not apply to form and substance of petition alleging delinquent conduct on part of child. In re V.R.S. (Civ.App. 1974) 512 S.W.2d 350.

B. In juvenile proceeding, petitions for adjudication or transfer hearing are governed by Family Code. M.A.V. Jr., v. Webb County Court at Law (App. 4 Dist. 1992) 842 S.W.2d 739, rehearing denied, writ denied, rehearing of writ of error overruled.

C. It is not necessary that petition for waiver of juvenile court jurisdiction be sworn to by prosecuting attorney. R.E. M. v. State (Civ.Appl. 1978) 569 S.W.2d 613, ref. n.r.e.

D. Where notice of hearing contained the name of an alleged delinquent child different from that which appeared in petition to have child declared a juvenile delinquent, and there was nothing in transcript indicating that there was no such person as that named in notice, juvenile court did not have jurisdiction. Johnson v. State, 1966, 401 S.W.2d 298.

E. Section 54.05. Hearing to Modify Disposition, states in subsec. (d) that a hearing to modify disposition 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.

F. Any attorney representing a child under title 3, Juvenile Justice Code, is entitled to 10 days to prepare for any adjudication or transfer hearing. (See Section 51.10.)

IV. Delinquency or Criminal Prosecution

A. Alternative pleadings and summons under which child could have been transferred to criminal court for prosecution as an adult, or remain in juvenile court and be adjudicated, were not defective. Matter of G.B.B. (Civ.App. 1978) 572 S.W.2d 751, ref. n.r.e.

B. It does not offend due process to file a petition for adjudication and later, before action on the petition, seek waiver of juvenile court's jurisdiction and transfer to district court for criminal prosecution. Matter of B.V. (App. 13 Dist. 1982) 645 S.W.2d 334.

V. Transfer Hearing

A. For certification of juvenile as adult for criminal prosecution, citation must state that purpose of hearing is to consider transfer to criminal court. McBride v. State (App. 14 Dist. 1983) 655 S.W.2d 280.

VI. Reasonable Particularity

A. In proceedings to **certify** juvenile as an adult, each count in the petition must state with reasonable particularity time, place and manner and penal law or standard of conduct allegedly violated. S.C.B. v. State (Civ.App. 1979) 578 S.W.2d 833, ref.n.r.e.

B. Statutory provisions, stating that petition for **adjudication or transfer** hearing must state with reasonable particularity time, place, and manner of acts alleged and penal law or standard of conduct violated by the acts are mandatory. M.A.V. Jr., v. Webb County Court at Law (App. 4 Dist.

1992) 842 S.W.2d 739, rehearing denied, writ denied, rehearing of writ of error overruled.

C. Due process does not require language used in certification proceedings be as certain as language required in an indictment or information. It is enough that the conduct be defined as criminal so that the juvenile can either be under the jurisdiction of the juvenile court or be transferred to the adult court. Matter of Edwards (App. 13 Dist. 1982) 644 S.W.2d 815, ref. n.r.e.

D. Charge must be reasonable and definite in petition in juvenile proceeding for adjudication or transfer hearing. M.A.V. Jr., v. Webb County Court at Law (App. 4 Dist. 1992) 842 S.W.2d 739, rehearing denied, writ denied, rehearing of writ of error overruled.

E. State is not bound by date alleged in petition State may prove that offense was committed before, on, or after date alleged in petition, provided date proved is date before date of indictment, and is within statute of limitations. Matter of G.M.P. (App. 14 Dist. 1995) 909 S.W.2d 198.

F. Petition was fatally defective where it failed to set forth with reasonable particularity the state and county or any place where alleged acts of delinquent conduct occurred. Matter of H S, Jr., (Civ.App. 1978) 564 S.W.2d 446.

G. Petition must name all victims of all alleged crimes. M.A.V. Jr., v. Webb County Court at Law (App. 4 Dist. 1992) 842 S.W.2d 739, rehearing denied, writ denied, rehearing of writ of error overruled.

VII. Penal Law violated

A. Fact that petition cited incorrect section number for Penal Code provision which juvenile was accused of violating did not result in failure to give juvenile notice of charges against him when wording of the charge itself was alleged with sufficient particularity, and Penal Code section number, correct or not, was surplusage. Matter of H.R.A. (App. 9 Dist. 1990) 790 S.W.2d 102.

VIII. Notice

A. Petition is not fundamentally defective if the names and address of the parents are not stated. No harm was shown. N.E. v. State (Civ.App. 1981) 616 S.W.2d 690.

B. In juvenile delinquency cases, child must know of specific issues he is to meet and they must be set forth in petition with particularity. C.F. v. State (App. 8 Dist. 1995) 897 S.W.2d 464.

C. Petition which stated that juvenile had sexual contact with minor, and which identified indecency with child statute as precise provision of penal code allegedly violated, provided sufficient notice to juvenile of acts alleged and matters to be proved, though petition did not specifically allege that sexual contact occurred with intent to arouse or gratify sexual desire of any person. C.F. v. State (App. 8 Dist. 1995) 897 S.W.2d 464.

D. The strict prohibition against amendment of pleadings applicable in criminal cases is not applicable in juvenile proceedings but due process requires that the amendment must come at such time, and such circumstances, as to be basically fair to the juvenile. Carrillo v. State (Sup. 1972) 480 S.W.2d 612.

E. When state petitions juvenile court for certification hearing, the burden of state is not to establish guilt of juvenile but to present evidence that will permit juvenile court to exercise its discretion in deciding whether or not to transfer juvenile to district court. Matter of M.I.L. (Civ.App. 1980) 601 S.W.2d 175.

SUMMONS

Source of the Law: Texas Family Code, Section 53.06 of the Juvenile Justice Code.

I. The juvenile court shall direct issuance of a summons to:

- A. The child named in the petition; (not even parent can accept for child)
- B. The child's parent, guardian or custodian;
- C. The child's guardian ad litem; and
- D. Any other person who appears to the court to be a proper or necessary party to the proceeding.

II. The summons must require the persons served to appear before the court at the time set to answer the allegations of the petition. A COPY OF THE PETITION must accompany the summons.

III. The Court may endorse on the summons an order directing the person having the physical custody or control of the child to bring the child to the hearing.

A. A person who violates an order entered under this subsection may be proceeded against by sec. 53.08, Writ of Attachment, or

B. By sec. 54.07. Enforcement of Order, which states that any order of the juvenile court may be enforced by contempt, or

C. On motion of juvenile court or any person or agency entitled to receive restitution or probation payments for the benefit of a child, the juvenile court may render a judgment.

D. If a juvenile is in detention under sec. 53.02(b), the court may endorse on the summons an order that a law-enforcement officer shall serve the summons and shall immediately take the child into custody and bring him before the court.

E. A party, OTHER THAN THE CHILD, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

IV. In General

A. The Family Code petition and notice requirements dealing with juvenile delinquency proceedings are applicable to hearings to CERTIFY a juvenile as an adult. Light v. State (App. 3 Dist. 1999) 993 S.W.2d 740, rehearing

overruled, petition for discretionary review granted, vacated 15 S.W.3d 104, on remand.

B. Where return of service of summons is valid on its face, juvenile has burden of establishing service was not in compliance with statutes. R.A.G. v. State (App. 5 Dist. 1993) 870 S.W.2d 79, writ granted, reversed 866 S.W.2d 199, rehearing overruled.

C. Probation can be revoked even if the probation term has expired if the summons is served and the petition filed before the probation expires. J.A.D. v. State, (Cr.App. 2000) 31 S.W.3d 668.

V. Contents of Summons

A. Prior to transfer of juvenile from juvenile court to district court, the petition and notice requirements of the Texas Family Code must be satisfied, and the summons must state that the hearing is for the purpose of considering discretionary transfer. Melendez v. State (App. 1 Dist. 1999) 4 S.W.3d 437.

B. To revoke probation of a juvenile, a written summons addressed to a police office must be personally delivered to parent, guardian, or person having custody of juvenile who is summoned; summons must include time of hearing, place of hearing, and order to persons to whom summons is delivered to appear personally and bring juvenile to hearing. Summons must set out manner or terms of probation which have been violated; and notice must be personally served upon juvenile. Franks v. State (Civ.App. 1973) 498 S.W.2d 516.

C. Service of only copy of original petition did not constitute a summons because it did not state the time and place the juvenile was to appear in court. Johnson v. State (Cr.App. 1977) 551 S.W.2d 379.

D. Service on secretary of juvenile's attorney of summons and petition for juvenile to appear at the hearing on waiver of juvenile jurisdiction did not comply with requirement to personally serve juvenile. Alaniz v. State (App 4 Dist. 1999) 2 S.W.3d 451.

E. In delinquency proceedings, trial court acquired jurisdiction over juvenile to adjudicate him under the determinate sentencing provisions when the state properly served him with the original summons, though the original petition was not a determinate petition, and juvenile was not personally served with a summons for the amended determinate petition. In re G.A.T. (App. 14 Dist. 2000) 16 S.W.3d 818, rehearing overruled, petition for review denied.

F. Issuance of summons to EITHER of child's parents was sufficient to comply with requirement in subsection (a) of Sec. 53.06 of the Texas Family Code. Matter of Edwards (App. 13 Dist. 1982) 644 S.W.2d 815 ref. n.r.e.

G. Summons must be issued to parents of a juvenile who is married. Op.Atty.Gen. 1981, No. MW-298.

V. Petition and Summons

A. Better practice is for summons to recite that "a copy of the petition accompanies this summons" rather than "a copy of the pleadings heretofore filed accompanies this summons." However, stating that "a copy of the petition" accompanied summons is not required. All that is required is that a copy of the petition in fact accompanied the summons. Matter of Edwards (App. 13 Dist. 1982) 644 S.W.2d 815 ref. n.r.e.

VI. Waiver

A. Juvenile's failure to object to lack of personal service or summons does not constitute a waiver of service of process. Alaniz v. State (App 4 Dist. 1999) 2 S.W.3d 451.

B. Although juvenile may not waive service of summons, there is nothing to prevent the child from waiving a defect in the summons. D.A.W. v. State (Civ.App. 1976) 535 S.W.2d 21, ref. n.r.e.

VII. Parties

A. State made parents "parties" to juvenile adjudication involving their child when state summoned them to appear, seeking to hold them responsible for payment of court-appointed attorney fees, court costs, restitution and support if necessary. Therefore, parents are entitled to participate through their own attorney at the hearing. Adair v. Kupper (App. 7 Dist. 1994) 890 S.W.2d 216, rehearing denied.

SERVICE OF SUMMONS

Source of the Law: Texas Family Code, Section 53.07 of the Juvenile Justice Code.

I. Section 53.07(a). Service of Summons. Lists timeliness of service.

A. "If a person to be served with summons **is in this state** and **can be found...**"

1. Summons shall be served upon him **PERSONALLY** at least **TWO DAYS** before the day of the adjudication hearing.

B. If he is in this state and cannot be found,

1. But his address is known, or

2. Can with reasonable diligence be ascertained

3. The summons may be served on him by mailing a copy by registered or certified mail, return receipt requested (rrr)

4. At least five (5) days before the day of the hearing.

C. If he is outside this state

1. But he can be found, or

2. His address is known, or

3. His whereabouts or address can, with reasonable diligence, be ascertained

4. Service of summons may be made either by delivering a copy to him personally, or

5. Mailing a copy to him by registered or certified mail, rrr,

6. At least five days before the day of the hearing.

II. 53.07(b): The juvenile court has jurisdiction of the case if,

A. After reasonable effort

- B. A person OTHER THAN THE CHILD
- C. Cannot be found, nor

D. His post office address ascertained,

E. Whether he is in or outside of the state.

III. 53.07(c): Service of summons may be made by

A. Any suitable person

B. Under the direction of the court.

IV. In General

A. If juvenile is timely notified of proceeding, but mother/parent is not present at hearing but mother/parent was duly summoned, the error is not fatal. Carner v. State (Cr.App. 1980) 592 S.W.2d 618.

B. Petition and notice requirements of Sec. 53.04 and 53.07 must be satisfied in proceedings on petition for certification of juvenile as adult. McBride v. State (App. 14 Dist 1983) 655 S.W.2d 280.

C. Absent affirmative showing on the record of service upon the juvenile of the petition for adjudication, juvenile court is without jurisdiction. Matter of K.P.S. (App. 13 Dist. 1992) 840 S.W.2d 706.

1. This also applies to proceedings on discretionary transfer of juveniles to the district court for criminal proceedings as adults. Light v. State (App. 3 Dist. 1999) 993 S.W.2d 740, rehearing overruled, petition for discretionary review granted, vacated 15 S.W.3d 104, on remand.

D. Trial court lacked jurisdiction to conduct either pretrial conference or hearing on delinquency petition or to issue adjudication and disposition orders, absent actual service upon juvenile of summons and petition as required by Family Code, even though:

1. Juvenile appeared at preliminary hearing,
2. Juvenile's counsel sent juvenile copy of petition, and
3. Trial court informed parties at pretrial hearing of date on which presentation of evidence at adjudication proceeding

would commence. Matter of A.B. (App. 6 Dist. 1997) 938 S.W. 2d 537, rehearing overruled, writ denied.

E. Purpose of the law

1. The purpose of subsection (c) governing service of summons on a juvenile is to require that service be made upon a juvenile by one acting in official capacity. Chandler v. State (App. 3 Dist. 1985) 695 S.W.2d 248.

2. This subsection (c) does NOT require an express order of the juvenile court directing service of the summons, and the summons need only be service by a "suitable person" who is under the direction of the juvenile court. Chandler v. State (App. 3 Dist. 1985) 695 S.W.2d 248.

F. Presumptions and burden of proof

1. Burden to show invalidity of service was upon defendant. Sauve v. State (App. 5 Dist. 1982) 638 S.W.2d 608, review refused.

2. Ordinarily, officer's return of summons in juvenile transfer proceeding, which is valid on its face, carries presumption of truth of fact stated on return and of regularity. R.A.G. v. State (App. 5Dist. 1993) 870 S.W.2d 79, writ granted, reversed 866 S.W.2d 199, rehearing overruled.

G. Personal Service

1. As a result of failure to serve juvenile personally with process, trial court lacked jurisdiction to hear case against juvenile. Matter of H.R.A. (App. 9 Dist. 1990) 790 S.W.2d 102.

2. Fact that juvenile was aware of date and time of core proceeding against him, that he showed up with parents and counsel, and that no harm was shown or alleged was insufficient to confer jurisdiction to proceed on petition. Matter of H.R.A. (App. 9 Dist. 1990) 790 S.W.2d 102.

3. Whether juvenile received copy of AMENDED petition more than two days before start of trial is a relevant consideration in evaluating requirement that amendment be basically fair to juvenile, but IS NOT, in and of itself, a

requirement. R.X.F. v. State (App. 10 Dist. 1996) 921 S.W.2d 888.

H. Waiver

1. Juvenile charged with crime must be served with SUMMONS and MAY NOT waive right to service of summons. R.A.G. v. State (App. 5Dist. 1993) 870 S.W.2d 79, writ granted, reversed 866 S.W.2d 199, rehearing overruled.

a. Juvenile may not waive service of summons, which is required by due process, in delinquency proceeding. Matter of A.B. (App. 6 Dist. 1997) 938 S.W. 2d 537, rehearing overruled, writ denied.

b. Nor can anyone waive it for him. Light v. State (App. 3 Dist. 1999) 993 S.W.2d 740, rehearing overruled, petition for discretionary review granted, vacated 15 S.W.3d 104, on remand.

2. Juvenile cannot waive service of copy of PETITION for adjudication. Matter of K.P.S. (App. 13 Dist. 1992) 840 S.W.2d 706.

SAMPLE FORM OF ORIGINAL PETITION

No.

IN THE MATTER OF

IN THE JUVENILE COURT

OF

BELL COUNTY, TEXAS

ORIGINAL PETITION ALLEGING DELINQUENT CONDUCT

COMES NOW the State of Texas, by and through the County Attorney of Bell County, Texas, hereinafter styled "Petitioner," and files this petition, pursuant to Section 53.04, Texas Family Code, against _____, hereinafter styled "Juvenile-Respondent," who is now alleged to have engaged in delinquent conduct, and as grounds that the Juvenile-Respondent engaged in delinquent conduct the State would show this Honorable Court that the State has information and good reason to believe and does believe the following:

I.

The Juvenile-Respondent is a child as that term is defined in Title III of the Texas Family Code, and who resides at _____, _____ County, Texas.

II.

The parent of the Juvenile-Respondent is _____ who resides at _____, _____ County, Texas.

III.

The Juvenile-Respondent is in need of rehabilitation and the protection of the public and the protection of the Juvenile-Respondent requires that a disposition be made pursuant to Title III, Texas Family Code.

IV.

It is in the Juvenile-Respondent's best interest to be placed outside his home, and reasonable efforts have been made to prevent or eliminate the need for the Juvenile-Respondent's removal from the home and to make it possible for the Juvenile-Respondent to return to his home. This Juvenile-Respondent has been previously adjudicated on the _____, for the offense of _____, which is a (felony or misdemeanor)_____.

V.

The Juvenile-Respondent, a child as that term is defined in Title III of the Texas Family Code, did engage in delinquent conduct, to-wit:

A. (CHARGE or MULTIPLE CHARGES)

AGAINST THE PEACE AND DIGNITY OF THE STATE.

Such conduct is delinquent conduct as defined by Section 51.03(a), Texas Family Code, for the reason that it violates a penal law of the State punishable by confinement or imprisonment, to-wit: Section _____ of the Texas Penal Code.

VI.

The State requests that this Court order the Juvenile-Respondent and the parents of the Juvenile-Respondent to pay full or partial restitution to all persons and victims suffering from personal injury or property damage as a result of all offenses alleged in Paragraph V, herein, pursuant to Section 54.041, Texas Family Code.

VII.

The State requests that this Court order the Juvenile-Respondent and the parents of the Juvenile-Respondent to pay probation fees of up to fifteen dollars

(\$15.00) per month pursuant to Section 54.061 of the Texas Family Code if the Court places the Juvenile-Respondent on probation.

VIII.

The State requests that if the Juvenile-Respondent be placed on probation outside his home or committed to the care, custody, and control of the Texas Youth Commission, the parents be ordered to pay child support pursuant to Section 54.06, Texas Family Code, in whatever sum this Court determines to be reasonable.

IX.

The State requests that if after adjudication this Court finds there is a need for disposition, the Juvenile-Respondent and the parents of the Juvenile-Respondent be ordered to pay a juvenile probation diversion fund fee of \$20.00 and that such fee be taxed as costs of court pursuant to Section 54.0411, Texas Family Code, if this Court places the Juvenile-Respondent on probation.

X.

The State requests that if after adjudication the Court finds there is a need for disposition, this Court order the Juvenile-Respondent and the parents of the Juvenile-Respondent to pay all reasonable and necessary costs of court incurred.

XI. (IF APPLICABLE FOR TYC COMMITMENT)

The State requests that this Court, after a disposition hearing, order the Juvenile-Respondent to be committed to the care, custody, and control of the Texas Youth Commission for an indeterminate period of time, not to exceed his twenty-first birthday.

PRAYER

Wherefore, the State of Texas prays:

- (1) that this Court direct that summons be issued and served on all parties as required by Title III, Texas Family Code;
- (2) that this cause be set down for an adjudication hearing on some date and at a place to be fixed by this Court;
- (3) that upon an adjudication hearing, the said Juvenile-Respondent be found to have engaged in delinquent conduct, and that such disposition of the said Juvenile-Respondent be made which this Court deems to be for the best interest of the Juvenile-Respondent and for the protection of the public and for the protection of the Juvenile-Respondent;
- (4) that upon disposition, the Juvenile-Respondent and the parents of the Juvenile-Respondent be ordered to appear and show cause why they, or each of them, should not be ordered to pay:
 - 1.all restitution assessed in this case;
 - 2.a probation fee of no more than \$15.00 per month;
 - 3.support if the Juvenile-Respondent is placed outside the home or committed to the Texas youth Commission;
 - 4.fees awarded the court appointed attorney;
 - 5.the juvenile probation diversion fund fee of \$20.00;

6.all reasonable and necessary costs of court incurred.

Respectfully submitted,

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Assistant County Attorney/District

Attorney

P.O. Box 1127
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(254) 933-5555 Fax 933-5444
State Bar No. _____

THE STATE OF TEXAS

SUMMONS

TO ANY SHERIFF OR OFFICER OF THE _____ COUNTY JUVENILE PROBATION DEPARTMENT YOU ARE HEREBY COMMANDED that you summon **(Juvenile Respondent's name)** of **(address)**, in _____ County, Texas, and who is represented to reside within one hundred miles of the courthouse of _____ COUNTY, Texas, in which this suit is pending or who may be found within such distance at the time of trial, to be and appear before the JUVENILE COURT, _____ COUNTY, to be held at the Court House in _____, Texas, forthwith, on the _____ day of _____, at _____ o'clock, **M.**, then and there answer the allegations of the petition filed (date) _____, therein, a copy of which is attached hereto certain suit now pending in said Court, styled in the matter of:

(Juvenile Respondent's initials)

Cause No. _____ on the docket of said Court, and there attend the Court from day to day, and from term to term, until lawfully discharged. Issued this the _____ day of _____, 2001, and at the instance of the Petitioner in said suit. Herein Fail Not, but have you then and there before said Court this writ, with your return thereon, showing how you have executed the same.

Witness my official signature at _____ County, Texas, on this the _____ day of _____, 2001.

S. Filer, CLERK
DISTRICT COURT, _____ COUNTY

By: _____ Deputy

OFFICER'S RETURN

Came to hand on _____ at ____ o'clock __.m. Executed by delivering a copy of this summons to the within-named _____ in person at in ____ County, Texas, on the ____ day of _____, 2001, at ____ o'clock ____ .m.

I actually and necessary traveled _____ miles in the service of this Summons.

Total fee for serving this Writ \$ _____

To certify which witness my hand officially.

_____ Sheriff/Constable
County, Texas
Deputy