

Before Adjudication: Custody, Detention, Deferred Prosecution and Other Preliminaries

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Juvenile Law

- Juvenile Law is a hybrid or cross between civil and criminal
 - The rights guaranteed to an adult criminal defendant are also guaranteed to the juvenile respondent.
 - Right to trial by jury
 - Right to an attorney
 - Right against self incrimination
 - Rights against ex-post facto laws
 - Right to standard of *beyond a reasonable doubt*

Protection of the Public

- Texas Family Code section 51.01 provides in pertinent part that the primary purpose of the Juvenile Justice Code is “(1) to provide for protection of the public and public safety; (2) consistent with protection of the public and public safety...(C) to provide treatment, training and rehabilitation that emphasizes the accountability and responsibility of both the parent and the child for the child’s conduct. See *Sup. Id.*”

Grounds for a Juvenile to be Taken into Custody

- Juvenile Court Order
- Laws of Arrest
- Pursuant to a Directive to Apprehend
- By Law Enforcement if there is Probable Cause (PC) to believe that the Child has committed a crime or violated a condition of probation.
- By Juv. Probation Officer if there is PC to believe that the Child has violated a condition of probation or a condition of release

Juvenile Detention

- A child between the ages of 10 and 17 who is alleged to have committed a crime, may be taken into custody and detained in accordance with the Code of Criminal Procedure and the Family Code.
- Children are not entitled to bail.
- A release may include conditions reasonably related to securing the Child's attendance at subsequent proceedings.
- Conditions of Release must be in writing and provided to Child and Parent/Guardian.

Detention Hearing

- Texas Family Code section 54.01 requires a judicial determination that there is **probable cause** to believe that the child engaged in delinquent conduct or violated a condition of probation, and a decision as to whether to release or detain based on certain criteria.

Detention Hearing Criteria

If the child were released they

- (1) might abscond from the jurisdiction of the court; or,
- (2) no suitable supervision being provided to them by a parent or other guardian; or
- (3) they would have no parent or guardian able to return them to court; or,
- (4) they would be a danger to themselves or threaten the safety of the public; or,
- (5) they have previously been adjudicated and would likely commit a new offense if released. *TFC §54.01*

Detention Time Periods

- Judicial finding of PC within 48 hrs of being taken into custody.
- Initial Hearing without a Jury must be held not later than 2nd working day or 1st working day after weekend or holiday.
- Subsequent hearings are no more than 10 working days or 15 working days for county w/o cert. detention facility.
- Petition must be filed not later than:
 - 30th working day after initial Det'n Hearing for Capital Felony, Agg. C.S. Felony or 1st Degree Felony.
 - 15th working day after initial Det'n Hearing for all other offenses or violations of probation (Motion to Modify).

Detention Periods for Status Offenders

- Det'n Hearing must be held before the 24th hour after child arrived at det'n facility excluding hours of a weekend or holiday.
- Child adjudicated on a Status Offense may be ordered detained not more than 72 hours excluding weekends and holidays with one additional 72-hour period upon a finding of good cause by the Court.

Detention of Juveniles

- Texas law mandates a presumption in favor of release. TFC §53.02
- Child may be released by intake officer unless child used, possessed, or exhibited a firearm in the commission of the offense.



Juvenile Statements

- The Texas Family Code requires certain additional requirements in taking a statement of a juvenile. See §51.095 TFC
- -- If the child is in custody:
 - Juvenile processing office (approved by the juvenile board) or juvenile detention facility
 - **Magistrate** must give *Miranda* rights and be convinced that the child is knowingly, intelligently and voluntarily giving up those rights
 - Police officer can take the statement after the magistrate certifies that the child has waived rights
 - **Magistrate** verifies that the statement and rights were knowingly, intelligently and voluntarily waived

Juvenile Statements Cont'd

- Oral Statements
 - If not in Custody and voluntarily given and tend to establish the child's guilt. (secreted ev.)
 - Res Gestae
 - Statement made in Open Court at Adj'n, Grand Jury or other preliminary hearing other than Det'n Hearing.
 - Statements taken at School
 - Look to see if the Child was in a "special custody" different from the normal school setting in which all students are always in a form of custody.
 - Typically school statements are not custodial.

Juvenile Searches

- Pursuant to a Search Warrant
- By Consent
- By Third-Party Consent
- Stop and Frisk
- Plain View Seizure

Juvenile Searches at Schools

- School Searches
 - Was the search justified at its inception?
 - Was the search reasonable related in scope?
- Administrative Searches
- Locker Searches
- Strip Searches
- Random Drug Testing

Juvenile Sanction Guidelines

- Punishment decisions in juvenile cases are managed by Sanction Guideline Model adopted and recommended by the legislature.
- Sanction Guideline Level 1: Supervisory caution.
- Sanction Guideline Level 2: 3-6 months Dpro.
- Sanction Guideline Level 3: not less than 6 months standard probation
- Sanction Guideline Level 4: 3-12 months intensive supervision probation, followed by standard probation
- Sanction Level 5: 6-12 months placement outside the child's home in secure correctional facility, followed by intensive or standard probation
- Sanction Level 6: Indeterminate commitment to the Texas Juvenile Justice Department
- Sanction Level 7: Determinate Sentence or Transfer of Jurisdiction (Certification) to adult criminal court

Deferred Prosecution SGL2

- Dpro would be in the best interest of the Public and Child.
- Child and Parent/Guardian consent to Dpro.
- Child & Parent/Guardian may terminate the Dpro at any point and petition the Court for a hearing.
- An incriminating stmt made during Dpro may not be used in any Court hearing.

Who can give Deferred Prosecution?

- Prosecuting Attorney: any non-DWI or MIC/DUI 3rd or subsequent, offense.
- Probation Officer: any case that does NOT require referral to Prosecuting Attorney. (Must refer: crimes of violence against a person, weapon offenses and felonies.)
- Court: any non-DWI or MIC/DUI 3rd or subsequent, offense.

See: TFC §53.03, §59.003 & §59.005

When & How Long Dpro Can Be

- Dpro can be given:
 - Before the Jury is sworn during Jury Trial.
 - Before the 1st Witness is sworn during TBC.
 - Before the Child pleads or agrees to a stipulation of evidence.

The Court can add a period of Dpro to an existing Dpro so long as it is not longer than 1 year of combined supervision.

Juvenile Records

- Criminal Records of Juveniles:
 - A permanent criminal record is created when a Child is taken into custody or when formal charges are filed.
 - Juvenile Criminal History Records do not automatically “go away” when the Child turns 18.
 - Juvenile records can be used in future adult prosecutions.
 - Can be sealed under certain circumstances. See Chapter 58 TFC

Who Cannot Seal Their Records?

- Anyone who has received a **DETERMINATE SENTENCE**.
- Anyone who is **currently required to REGISTER AS A SEX OFFENDER**. (May seek sealing after release from Sex Offender Registration requirements.)
- Anyone who is **currently serving a sentence at TJJD or on TJJD PAROLE**. (May seek sealing after final discharge from TJJD supervision.)

Automatic Sealing Criteria:

- **No FELONY Adjudications as a Juvenile** – Misdemeanor offenses and unadjudicated Felony Offenses.
- **19 years old**.
- **No pending Juvenile cases**.
- **No pending Adult cases** that are Class B Misdemeanor or higher including Felony offenses.
- **No CONVICTIONS** as an Adult (age 17 or older) for a Class B Misdemeanor or higher including Felony offenses.
- **No cases transferred from Juvenile Court to Adult Court**. (Certified to stand trial as an adult.)

Sealing by Application Criteria:

- **18 years old** or at least **2 years** have passed since case ended.
- **No pending Juvenile cases.**
- **No pending Adult cases** that are Class B Misdemeanor or higher including Felony offenses.
- **No CONVICTIONS** as an Adult (age 17 or older) for a Felony offense.
- **No cases transferred from Juvenile Court to Adult Court.** (Certified to stand trial as an adult.)

Requires an Application be filed with the Juvenile Court to seal the records. Court can deny the application, no guarantees.

Other Juvenile Issues

- Chap. 55 TFC Mental Health Proceedings
 - Fitness to Proceed – Competency
 - Lack of Responsibility – similar to Insanity Defense
- Registration as Sex Offender under Chapter 62 of Code Criminal Procedure is discretionary with the judge in juvenile cases.
- Juveniles adjudicated of certain Felony offenses are required to submit a DNA sample.
- Education Code provides for removal of a child from his school and placement in an alternative education placement for certain offenses even if committed “off-campus”.

Judicial Findings

- **Parents**
 - In juvenile cases the judge can order parents to perform community service hours, go to counseling and pay restitution.
 - The court can assist the parents and fortify their authority by explaining to the child that if they will not be supervised in their own home, the court must find a more structured environment for them. The court can place children in a foster home, boot camps or long term detention.
 - Court orders parent to report any violation of probation and explains that for the parent to disobey a court order could result in the parent being held in contempt.
 - Parents are jointly responsible for fees & restitution.

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