

# Certifications

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Defined in Section 54.02 in the Texas Family Code as Waiver of Jurisdiction and Discretionary Transfer to Criminal Court

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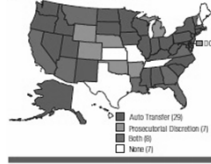
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Statutory Exclusion and Mandatory Waiver



Auto-transfer, Prosecutorial Discretion



Judicial Waiver

Automatic Waiver

Prosecutorial Discretion

Reverse Waiver, Criminal Blended Sentencing



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Section 51.02 - Child

10 years of age or older and under 17 years of age

Or

17 years of age or older and under 18 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



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### Who can be certified

- Individual currently under age 18
  - Capital Murder, 1st Degree felonies, Aggravated Control Substances Felony
    - At least 14 years of age and under 17 at time of commission of the offense
  - Second Degree felony, Third Degree Felony, State Jail Felony
    - At least 15 years of age and under 17 at time of commission of the offense
- Individual currently over age of 18
  - Capital Felony or Murder
    - At least 10 years of age and under 17 at time of commission of the offense
  - Aggravated Control Substances felony or first degree other than Murder
    - At least 14 years of age and under 17 at time of commission of the offense
  - Second degree, third degree, or state jail
    - At least 15 years of age and under 17 at time of commission of the offense

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### Notice and Hearing



- 54.02(b)
  - Must state that hearing is for the purpose of considering discretionary transfer
  - Section 53.04, 53.05, 53.06 and 53.07 must be complied with
- 53.04
  - Form of service
- 53.05
  - Hearing held within 10 working days after service if child is in detention
- 53.06
  - Child and child's parent, guardian, guardian ad litem or custodian must be served
  - Must attach petition and state time to answer petition
- 53.07
  - Personal service 2 days prior to hearing if in state and location is known otherwise 5 days

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54.02(a) and 54.02(j) require the hearing to take place before the Juvenile Court

Judge not Jury

District Court may not remand



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### What must happen before the hearing

- 54.04(d) requires:
  - Full diagnostic study
    - Not defined
  - Social Evaluation
  - Full investigation of the child, his circumstances and the circumstances of the offense
    - Not defined



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- Currently Under Age 18
- 54.02(a)
  - Must be a full investigation and hearing
  - Probable cause has been established that the child committed the offense
  - The welfare of the community warrants transfer because of
    - Seriousness of the offense, or
    - Background of child
- Currently Over Age of 18
- 54.02(j)
  - Must be a hearing
  - Probable cause
  - Preponderance of the evidence that
    - Reason beyond control of the state not practicable to proceed
  - After due diligence
    - No probable cause before 18 and new evidence found
    - Person could not be found
    - Appellate reasons

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Sec. 51.01. PURPOSE AND INTERPRETATION. This title shall be construed to effectuate the following public purposes:

- (1) to provide for the protection of the public and public safety;
- (2) consistent with the protection of the public and public safety:
  - (A) to promote the concept of punishment for criminal acts;
  - (B) to remove, where appropriate, the taint of criminality from children committing certain unlawful acts; and
  - (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;
- (3) to provide for the care, the protection, and the wholesome moral, mental, and physical development of children coming within its provisions;
- (4) to protect the welfare of the community and to control the commission of unlawful acts children;
- (5) to achieve the foregoing purposes in a family environment whenever possible, separating the child from the child's parents only when necessary for the child's welfare or in the interest of public safety and when a child is removed from the child's family, to give the child the care that should be provided by parents; and
- (6) to provide a simple judicial procedure through which the provisions of this title are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced.

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#### 54.02(f)

Not exhaustive but ***must*** consider these

- 1) Whether the alleged offense was against person or property, with greater weight in favor of transfer given to offenses against the person
- 2) Sophistication and maturity of the child
- 3) The record and previous history of the child
- 4) The prospects of adequate protection of the public and likelihood of the rehabilitation of the child by use of procedures, services and facilities currently available to the juvenile court

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#### Kent v. United States

- Seriousness of the alleged offense to the community and whether the protection of the community requires waiver
- Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner
- Whether the alleged offense was against persons or against property
- The prosecutive merit of the complaint
- Desirability of trial and disposition of the entire offense
- Sophistication and maturity of the juvenile
  - Considering home, environment, emotional attitude and pattern of living
- Record and previous history of the juvenile
- Prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile by the use of procedures, services, and facilities currently available to the juvenile court

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Hidalgo v. State  
983 S.W.2d 746

- Transfer to criminal district court for adult prosecution is the single most serious act the juvenile court can perform because once waiver of jurisdiction occurs, the child loses all protective and rehabilitative possibilities available
- Transfer was intended to be used only in exceptional cases
- The philosophy was that, whenever possible, children should be protected and rehabilitated rather than subjected to the harshness of the criminal system because children, all children are worth redeeming

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IN RE CAMERON MOON

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VS



***Moon v. State*, 451 S.W.3d 28 (2014)**

The trial court must set forth the basis for the order to transfer with **sufficient specificity to permit meaningful review**

The transfer of a juvenile offender from juvenile court to criminal court for prosecution as an adult should be regarded as the exception, not the rule

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In a footnote, the Moon court explains what should happen to the adult criminal case:

At least one legislatively provided alternative would seem to be for the juvenile court to conduct a new transfer hearing and enter another transfer order, assuming that the State can satisfy the criteria under Section 54.02(j) of the Juvenile Justice Code

The juvenile court has either validly waived its exclusive jurisdiction, thereby conferring jurisdiction on the criminal courts, or it has not.

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A BILL TO BE ENTITLED  
AN ACT  
relating to the appeal of waiver of jurisdiction and transfer to criminal court in juvenile cases.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
SECTION 1. Article 4.19(g), Code of Criminal Procedure, is amended to read as follows:  
(g) This article does not apply to a claim of a defect or error in a discretionary transfer proceeding in juvenile court. A defendant may appeal a defect or error only as provided by [Chapter 56, Family Code \[Article 44.43\]](#).

SECTION 2. Section 51.041(a), Family Code, is amended to read as follows:  
(a) The court retains jurisdiction over a person, without regard to the age of the person, for conduct engaged in by the person before becoming 17 years of age if, as a result of an appeal by the person or the state under Chapter 56 [re-by-the-person-under Article 44.43, Code of Criminal Procedure] of an order of the court, the order is reversed or modified and the case remained to the court by the appellate court.

SECTION 3. Sections 56.01(c) and (h), Family Code, are amended to read as follows:  
(c) An appeal may be taken:  
(1) except as provided by Subsection (n), by or on behalf of a child from an order entered under:  
(A) [Section 54.02 respecting transfer of the child for prosecution as an adult](#);

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## Important Case Law in the field of Certifications

- Kent vs U.S.
  - 383 U.S. 541
- In Re Gault
  - 387 U.S. 1
- Moon v. State
  - 410 S.W.3d 466
- Hidalgo v. State
  - 983 S.W.2d 746
- Carlson v. State
  - 151 S.W.3d 643
- Cantu v. State
  - 994 S.W.2d 721

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# Thank You

## Certifications

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