



THE ATTORNEY GENERAL OF TEXAS
KEN PAXTON



This is How We Do It Here: Evidentiary Rules in Juvenile Court

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What Rules Apply?

Civil or Criminal?

- ▶ General rule: Civil Rules of Procedure are followed
- ▶ Exceptions where criminal rules are followed:
 - Burden of proof
 - Discovery
 - **Rules of Evidence and Art. 38 C.C.P.**
 - Interpreter rules
 - Motion for new trial
 - Name of the respondent
 - Pseudonym by victim

Sec. 51.17 Fam. Code



Texas Rules of Evidence

Rule 101. Title, Scope, and Applicability of the Rules

- ▶ These rules may be cited as the Texas Rules of Evidence
- ▶ These rules apply to **proceedings in Texas courts** except as provided in subdivisions (d)-(f).

Effective April 1, 2015



Constitutional or Statutory Exceptions

- ▶ **Despite these rules**, a court must admit or exclude evidence **if required to do so** by
 - the United States or Texas **Constitution**,
 - a federal or Texas **statute**, or
 - a **rule** prescribed by the United States or Texas Supreme Court or the Texas Court of Criminal Appeals.

Rule 101(d), T.R.E.



Exceptions

- ▶ These rules do not apply to:
 - (1) a preliminary question of fact governing admissibility under Rule 104(a)
 - (2) grand jury proceedings
 - (3) the following miscellaneous proceedings:
 - (A) habeas corpus in extradition, rendition, or interstate detainer proceedings
 - (B) competency under Art. 46B.004
 - (C) bail proceedings other than hearings to deny, revoke, or increase bail
 - (D) justification for pretrial detention not bail
 - (E) to issue a search or arrest warrant
 - (F) direct contempt proceedings

Rule 101(e), T.R.E.



Statutory Exception

- ▶ Texas Rules of Evidence apply **unless otherwise provided** by Title III
 - The Juvenile Justice Code

Sec. 51.17 (c) Fam. Code



Detention Hearings

- ▶ In addition to testimony from witnesses, the court may consider **written reports** from
 - Juvenile probation officers
 - Professional court employees
 - Professional consultants

- ▶ Must allow attorney **access** to all written matter to be considered by the court

- ▶ May order attorney **not to reveal** items to child or parents if disclosure would harm rehabilitation or decrease likelihood of receiving information from source in future

Sec. 54.01(c) Fam. Code



More on Detention Hearings

- ▶ No statement made by a child at a detention hearing may be used against the child at any other hearing.

Sec. 54.01(g) Fam. Code

- ▶ Court or referee may make initial probable cause finding on **any reasonably reliable information** without regard to admissibility under the Rules of Evidence

Sec. 54.01(o) Fam. Code



Purpose of the Hearing

Rule 101(e), T.R.E.

- ▶ These rules do not apply to:
 - justification for pretrial detention not related to bail

16.01 CCP

- ▶ Adult examining trial
- ▶ Inquiry into truth of an accusation to justify pre-trial detention



Discretionary Transfer Hearings

- ▶ The court shall **obtain a complete diagnostic study, social evaluation, and full investigation** of the child, his circumstances, and the circumstances of the offense.
Sec. 54.02(d) Fam. Code
- ▶ In addition to testimony of witnesses, the court may consider **written reports** from
 - Probation officers
 - Professional court employees
 - Professional consultants
- ▶ Attorneys must have **access** to written material **5 days** before hearing
- ▶ May order attorney **not to reveal** items

Sec. 54.02(e) Fam. Code



Over 18 Discretionary Transfer

- ▶ **No requirement** of diagnostic study or complying with social evaluation or full investigation
- ▶ If requested at least **10 days** before hearing by respondent's attorney, the court shall order an 51.20 examination.
- ▶ Results must be provided to attorneys **5 days** before hearing.
Sec. 54.02(l) Fam. Code
- ▶ Mandatory transfer **does not require** diagnostic study, social evaluation or full investigation
Sec. 54.02(n) Fam. Code



Deferred Prosecution

- ▶ Incriminating statements made **during discussions or conferences** may not be used in court
Sec. 53.03(c) Fam. Code
- ▶ Probation officer **shall report to the court** any violation by the child
Sec. 53.03(f) Fam. Code
- ▶ The court may consider **professional representations** by the parties **concerning the nature of the case and the background of the respondent**. Representations made may not be used in trial.
Sec. 53.03(k) Fam. Code



Adjudication Hearings

- ▶ Only material, relevant, and competent evidence in accordance with the Rules of Evidence may be considered in an adjudication hearing.
- ▶ Chapter 38, Code of Criminal Procedure, may be considered in the adjudication hearing.
- ▶ Except in a detention or discretionary transfer hearing, a social history report or social service file shall not be viewed by the court before the adjudication decision.
- ▶ A social history report or social service file shall not be viewed by the jury at any time.

Sec. 54.03(d) Fam. Code



More on Adjudication Hearings

- ▶ A child need not incriminate himself.
- ▶ An extrajudicial statement obtained without fulfilling the requirements of this title or the constitution, may not be used in an adjudication hearing.
- ▶ A statement made by the child out of court is insufficient to support an adjudication unless it is corroborated.
- ▶ An adjudication cannot be had upon the testimony of an accomplice unless corroborated by other evidence.
- ▶ Evidence illegally seized or obtained is inadmissible in an adjudication hearing.

Sec. 54.03(e) Fam. Code



Withdrawn Plea Evidence

- ▶ If the court decides not to accept a plea agreement, the court shall inform the child of the court's decision and give the child an opportunity to withdraw the plea or stipulation of evidence.
- ▶ If the court rejects the agreement, **no** document, testimony, or other **evidence** placed before the court that relates to the rejected agreement **may be considered** by the court in a subsequent hearing in the case.
- ▶ A statement made by the child before the court's rejection of the agreement to a person writing a pre-disposition report may not be admitted into evidence.

Sec. 54.03 (j) Fam. Code



Hearsay Statement of Abuse Victims

- ▶ If a child **12 years** of age **or younger** or a person with a disability is the alleged victim of the violation:
 - Sexual Offenses, Assaultive Offenses, Prohibited Sexual Conduct, Sexual Performance by a Child, Trafficking of Persons or Compelling Prostitution.
- ▶ Applies only to statements that describe the violation that were made **by the victim** and were made **to the first person over 18**, to whom the child or person with a disability made a statement about the violation.
- ▶ 14 days notice of **intent to use** with name of witness and summary statement

Sec. 54.031 Fam. Code



Outcry Witnesses

Sec. 54.031 Fam. Code

- ▶ Applies to victim 12 or younger or person with a disability (13+)

Art. 38.072 CCP

- ▶ Applies to victim 13 or younger or person with a disability (13+)



Closed Circuit Testimony of Child-Victim

- | | |
|-----------------------------|---|
| ▶ Murder | ▶ Injury to a Child, Elderly Individual, or Disabled Individual |
| ▶ Capital Murder | ▶ Prohibited Sexual Conduct |
| ▶ Manslaughter | ▶ Aggravated Robbery |
| ▶ Aggravated Kidnapping | ▶ Sexual Performance by a Child |
| ▶ Indecency with a Child | ▶ Compelling Prostitution |
| ▶ Sexual Assault | ▶ Trafficking of Persons |
| ▶ Aggravated Assault | |
| ▶ Aggravated Sexual Assault | |

Court may order testimony of the child be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the court and the finder of fact.

Art. 38.071 CCP



Disposition Hearings

- ▶ The Court, notwithstanding the Texas Rules of Evidence or Ch. 37, CCP, may consider **written reports** from
 - probation officers
 - professional court employees
 - professional consultants

- ▶ Attorneys must have access to written material **2 days** before hearing

- ▶ May order counsel not to reveal items in reports.

Sec. 54.04(b) Fam. Code



Admission of Unadjudicated Conduct

- ▶ At disposition, a child may admit unadjudicated conduct & request the court to take the admitted conduct into account.

- ▶ Requires written agreement by prosecutor

- ▶ A court may consider conduct over which **exclusive venue lies in another county** only with **written permission** of the prosecutor for that county.

- ▶ A child may not be adjudicated by any court for considered conduct unless no written permission from an exclusive venue prosecutor.
 - Child's admission may not be used against the child in the adjudication.

Sec. 54.045 Fam Code



Hearing to Modify Disposition

- ▶ The court may consider written reports from
 - Probation officers
 - Professional court employees
 - Professional consultants

- ▶ Attorneys must have access to written material **2 days** before hearing

- ▶ May order attorney not to reveal items in reports

Sec. 54.05(e) Fam. Code



Transfer of Determinate Probation

- ▶ The hearing must be conducted before
 - the person's 19th birthday or
 - the person's 18th birthday if the offense for which the person was placed on probation occurred before September 1, 2011
- ▶ In the same manner as a hearing to modify disposition

Sec. 54.051(b) Fam. Code



Like a Hearing to Modify Disposition

- ▶ The court may consider **written reports** from
 - Probation officers
 - Professional court employees
 - Professional consultants
- ▶ Attorneys must have access to written material **2 days** before hearing
- ▶ May order attorney not to reveal items in reports

Sec. 54.05(e) Fam. Code



Determinate Transfer Hearing

- ▶ Court may consider **written reports and supporting documents** from
 - probation officers
 - professional court employees
 - professional consultants
 - employees of the Texas Juvenile Justice Department
 - employees of a post-adjudication facility
- ▶ Attorneys must have access to written material **5 days** before hearing
- ▶ **All written matter is admissible** in evidence at the hearing
- ▶ Respondent entitled to see all reports, evaluations and examinations

Sec. 54.11(d), (e) Fam. Code



Mental Illness Determination

▶ Court may consider:

- (1) the motion
- (2) supporting documents
- (3) professional statements of counsel
- (4) witness testimony
- (5) its own observation of the child

Sec. 55.11 (a) Fam. Code



Unfitness to Proceed Determination

▶ Court may consider:

- (1) the motion
- (2) supporting documents
- (3) professional statements of counsel
- (4) witness testimony
- (5) its own observation of the child

Sec. 55.31(b) Fam. Code



Waiver of Jurisdiction Case Law

- ▶ Neither Hearsay nor Confrontation Apply
 - D.W.L., 828 S.W.2d 520 (14th 1992)
 - Milligan, No. 03-04-00531-CR (3rd 2006)
 - Grant, 313 S.W.3d 443 (Waco 2010)
- ▶ Use of Inadmissible confession
 - B.L.C., 543 S.W.2d 151 (14th 1976)
 - T.L.C., 948 S.W.2d 41 (14th 1997)
- ▶ Use of Affidavits
 - P.A.C., 562 S.W.2d 913 (Amarillo 1978)
- ▶ Use of Co-defendants Statements
 - S.J.M., 922 S.W.2d 241 (14th 1996)
- ▶ Law of Parties
 - D.L.N., 930 S.W.2d 253 (14th 1996)
 - A.A., 929 S.W.2d 649 (4th 1996)



Disposition Case Law

- ▶ Expert Opinions (probation & TJJD witnesses)
 - J.K.R., 986 S.W.2d 278 (Eastland 1998)
 - C.E.M., No. 05-98-01866-CV (Dallas 1999)
 - A.L.S., No. 05-99-01244-CV (Dallas 2000)
- ▶ Social History Report
 - Tyler, 512 S.W. 2d 46 (Beaumont 1974)
 - A.A.A., 528 S.W.2d 337 (C.C. 1975)
 - A.E., 895 S.W.2d 481 (Austin 1995)
 - D.W.D., No. 02-03-0015-CV (Ft. Worth 2004)



Determinate Transfer Hearing Case Law

- ▶ Written Reports Admissible
 - R.M., 2004 Tex. App. Lexis11908 (4th 2004)
 - J.M.S.M., No. 13-13-00353-CV (13th 2014)
- ▶ No Right of Confrontation
 - M.J.-M., No. 02-14-00367-CV (Ft Worth 2015)
 - H.C., No. 02-15-00149-CV (Ft Worth 2016)



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