

ADJUDICATION, DISPOSITION, AND MODIFICATION HEARINGS

32ND ANNUAL JUVENILE LAW CONFERENCE
AUSTIN, TEXAS
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FIRST THINGS FIRST

JUVENILE COURT JURISDICTION
§51.04 Texas Family Code

- The juvenile court has exclusive original jurisdiction over all proceedings involving a child under Title 3 of the Family Code – the Juvenile Justice Code.
- Child is a person
 - 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 CINS as a result of acts committed before becoming 17 years of age.

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THE ADJUDICATION HEARING

Texas Family Code §54.03

- **THE JUVENILE DELINQUENCY CASE**
 - State files charges by way of a “Petition”
 - Juvenile Respondent “served” with the Petition and “summons” to court
 - Discovery
 - Other Pre-trial matters resolved
 - Case goes to trial: (*Adjudication Phase & Disposition Phase*)
 - Proceedings must be recorded (TFC §54.09)
- **THE PATH OF THE CASE (State’s Discretion)**
 - *Ordinary delinquency case*
 - *Determinate Sentence Case*
 - Only for offenses enumerated in TFC §53.045
 - Petition must be approved by a Grand Jury
 - Juvenile court must be a district court

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THE ADJUDICATION HEARING

Texas Family Code, §54.03

THE "PARTIES" IN A JUVENILE DELINQUENCY (OR CINS) CASE

- Respondent
- Parent
- Spouse
- Guardian
- Guardian ad Litem
 - (If parent/guardian absent OR incapable/unwilling to act in child's best interest)

• THE REQUIREMENT OF PERSONAL SERVICE ON THE RESPONDENT

- **No Waiver of Service (Respondent)**
- Court record must reflect personal service on Respondent
 - Jurisdictional (No "personal service" on Respondent = No court jurisdiction)
- Other Parties (parent, guardian, guardian ad litem) - WAIVER OKAY!

Texas Family Code, §53.06(e)

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THE ADJUDICATION HEARING

Texas Family Code §54.03

• ADJUDICATION HEARING *(Like guilt/innocence phase of a criminal trial)*

- **Required proceeding: Adjudication Hearing cannot be waived**
- **Jury trial required, unless waived by Respondent**

• ESSENTIALLY 3 WAYS TO GO

- Contested adjudication before a jury – *(Again, jury required unless waived)*
- Contested adjudication before the court *(court trial)*
- Uncontested adjudication before the court *(Plea/Stipulation pursuant to Agreement b/t Resp & State)*
 - So, a full-blown hearing not required
 - Plea-bargaining okay
 - Adjudication Hearing may be by Plea and Stipulation of Evidence

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THE ADJUDICATION HEARING

Texas Family Code, §54.03

JURY COMPOSITION

• Jury Size

- Depends on Nature of Case & Charged Offense
 - Ordinary Delinquency Case
 - Determinate Sentence Case
- Also Depends on What Court is Designated as Juvenile Court
 - District Court (12 person jury) OR (6 person jury)
 - County Court (6 person jury)

• Peremptory Challenges - TFC, §53.06(e)

- Felony Case (10)
- Misdemeanor Case (3)

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THE ADJUDICATION HEARING

Texas Family Code, §54.03

REQUIRED JUDICIAL ADMONISHMENTS

- **Admonishments Required in ALL CASES** - TFC §54.03(b)
 - The allegations made against the respondent (child)
 - The nature and possible consequences of the proceeding, including law regarding admissibility of record of a juvenile court adjudication in a criminal proceeding
 - The respondent's privilege against self-incrimination
 - The respondent's right to trial and to confrontation of witnesses
 - The respondent's right to representation by an attorney
 - The respondent's right to trial by jury

Texas Family Code, §54.03(b)

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THE ADJUDICATION HEARING

Texas Family Code, §54.03

JUDICIAL ADMONISHMENTS

- **Who gives the Admonishments**
 - The Juvenile Court Judge
- **Who gets the Admonishments**
 - Respondent, Parent(s), Guardian, or Guardian ad Litem
- **Timing of the Admonishments**
 - At the beginning of the Adjudication Hearing
- **Action to take re improper Admonishment**
 - Must object on record before testimony begins to preserve error

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THE ADJUDICATION HEARING

Texas Family Code, §54.03

ADDITIONAL ADMONISHMENTS

- **Regarding Lesser Included Offenses**
 - Some Texas courts and Dawson recommends that the juvenile court admonish a respondent on (at least some) LIOs.
- **Regarding Felony Offenses (Ordinary Delinquency Cases)**
 - Possible commitment to TJJD until age 19
 - Possible probation until age 18
 - Possible placement outside home as a condition of probation
- **Regarding Felony Offenses (Determinate Sentence Cases)**
 - Range of punishment (Capital Offense, 1st Degree Felony, Aggravated CS Felony, 2nd Degree Felony, 3rd Degree Felony for 40, 20, or 10 years, respectively)
 - Possible probation lasting until age 19, and possible transfer to adult probation at age 19
 - Possible commitment to TJJD until age 19, and possible transfer to TDCI at age 19

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THE ADJUDICATION HEARING

Texas Family Code, §54.03

ADDITIONAL ADMONISHMENTS

- **Regarding Felony Offenses (*Determinate Sentence Cases*)**
 - Admonishment regarding possible transfer to adult probation at age 19
 - Admonishment regarding possible placement outside home as a condition of probation
- **Regarding Misdemeanor Offenses**
 - Admonishment regarding possibility of probation until age 18
 - Admonishment regarding possibility of placement outside home as a condition of probation

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THE ADJUDICATION HEARING

Texas Family Code, §54.03

PLEA AGREEMENT ADMONISHMENTS

- That court is not required to accept plea bargain agreement
- That Respondent can withdraw plea if court rejects agreement
- That if court accepts plea respondent cannot appeal unless:
 - Court grants permission to appeal; **OR**
 - Appeal relates to a challenge to the denial of a written pre-trial motion

Texas Family Code, §54.034

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THE ADJUDICATION HEARING

Texas Family Code, §54.03

REFEREES AND ASSOCIATE JUDGES

Texas Family Code §54.10(a)

- ***In Ordinary Delinquency Cases***
 - May sit as judge in either court trials or jury trials. [TFC §54.10\(a\)](#)
 - May take **“agreed”** Pleas and Stipulations of Evidence.
 - Must give respondent and parents all required admonishments.
- ***In Determinate Sentence Cases***
 - **Cannot sit as judge in either court trials or jury trials.**
 - May take **“agreed”** Pleas and Stipulations of Evidence. [TFC §54.10\(e\), \(f\)](#)
 - **Must send written findings and recommendations regarding determinate sentence “agreed” pleas and stipulations to the juvenile court judge for approval or rejection.**

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THE DISPOSITION HEARING

Texas Family Code §54.04

WHAT IS A "DISPOSITION HEARING"?

- A hearing to determine what to do with a juvenile respondent who has been adjudicated for a penal offense.
 - The equivalent of the "punishment phase" in a criminal trial.

WHEN IS A "DISPOSITION HEARING" REQUIRED AND WHEN DOES IT TAKE PLACE?

- Required whenever an Adjudication Hearing has resulted in the respondent being found to have engaged in delinquent conduct .
 - Must be separate and distinct from an Adjudication Hearing - §54.04(a)
 - Generally heard immediately following Adjudication Hearing, but that's within the discretion of the juvenile court.

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THE DISPOSITION HEARING

Texas Family Code §54.04

ORDINARY DELINQUENCY CASES

- All misdemeanor offenses fall into this category
- Also felony offenses (*except determinate sentence cases*)
- What Can Happen in a "Disposition Hearing"?
 - Probation until 18
 - Possible out of home placement as a condition of probation
 - May be extended up to age 18
 - Minimum 2 year term for sexual offenses
 - Commitment to TJJD, if felony offense
 - NO TJJD COMMITMENT FOR MISDEMEANOR OFFENSES
 - No Disposition
 - Court would dismiss the respondent and enter a judgment without any disposition - TFC §54.04(c).

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THE DISPOSITION HEARING

Texas Family Code §54.04

ORDINARY DELINQUENCY CASES

- Who Hears Disposition: Judge or Jury
 - No right to jury in disposition hearing, whether misdemeanor or felony.
 - Judge decides disposition
 - Respondent has same rights as in Adjudication Hearing.
- Evidence court may consider
 - Social History Reports
 - Detention Reports
 - Live testimony (fact witnesses, professional court employees & consultants)
 - Evidence admitted during the Adjudication Hearing
 - Victim testimony
 - COURT MUST PROVIDE DEFENSE COUNSEL WITH ACCESS TO ALL WRITTEN MATTERS TO BE CONSIDERED BEFORE DISPOSITION HEARING
- Referees and Associate Judges
 - May hear case if no objection from any party

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THE DISPOSITION HEARING

Texas Family Code §54.04

DETERMINATE SENTENCE CASES

- **What Can Happen in a “Disposition Hearing”?**
 - **Probation until age 19**
 - Possible out of home placement as a condition of probation
 - Probation term can be up to 10 years
 - Minimum 2 year term for sexual offense
 - Possible extension of probation term
 - Extension may not go beyond 10 years
 - **Possible sentence of up to 10, 20, or 40 years**
 - **Possible judgment of “No Disposition”**

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THE DISPOSITION HEARING

Texas Family Code §54.04

DETERMINATE SENTENCE CASES

- **Who Hears Disposition: Judge or Jury**
 - Respondent has right to jury in disposition hearing.
 - **Must make election for jury disposition before voir dire begins.**
 - If no election made before voir dire, then judge decides disposition.
- **Evidence the court may consider**
 - Social History Reports
 - Detention Reports
 - Live testimony (fact witnesses, professional court employees)
 - Evidence admitted during Adjudication Hearing
 - Victim testimony

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THE DISPOSITION HEARING

Texas Family Code §54.04

DETERMINATE SENTENCE CASES

- **Referees and Associate Judges**
 - Cannot sit as judge in determinate sentence trial (neither court trial NOR jury trial).
 - **May take Plea and Stipulation of Evidence when State and Respondent “agree to the disposition of the case , wholly or partly”.**
 - **Must send written findings and recommendations on determinate sentence “agreed” pleas and stipulations to juvenile court judge for approval or rejection.**

TFC §54.10(e),(f)

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THE DISPOSITION HEARING

Texas Family Code §54.04

GENERAL RULE:

AN **“ADJUDICATION”** FOR ENGAGING IN DELINQUENT CONDUCT REQUIRES THAT A **“DISPOSITION HEARING”** BE HELD.

Texas Family Code §54.04(h)

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THE DISPOSITION HEARING

Texas Family Code §54.04

DISPOSITION IS NOT AUTOMATIC!

Texas Family Code §54.04(c)

No disposition may be made ... unless the [juvenile respondent] is in need of rehabilitation or the protection of the public or the [juvenile respondent] requires that disposition be made. If the court or jury does not so find, the court shall dismiss the [juvenile respondent] and enter a final judgment without any disposition. No disposition placing the child on probation outside the child’s home may be made under this section unless the court or jury finds that the child, in the child’s home, cannot be provided the quality of care and level of support and supervision that the child needs to meet the conditions of probation.

- What is required for court or jury to make a “Disposition” finding?

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THE DISPOSITION HEARING

Texas Family Code §54.04

THE GUIDING QUESTION

“WHETHER “THE [JUVENILE RESPONDENT] IS IN NEED OF REHABILITATION OR THE PROTECTION OF THE PUBLIC REQUIRES THAT A DISPOSITION BE MADE?”

Ordinary Delinquency Case

Judge Answers

Determinate Sentence Case

(Where the Respondent elects jury disposition)

Jury Answers

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THE DISPOSITION HEARING

Texas Family Code §54.04

WHAT HAPPENS IF THE COURT OR JURY GIVES
A “NO” ANSWER TO “THE GUIDING QUESTION” ?

**The judge must dismiss the juvenile
respondent and enter a final judgment
without any disposition.**

Texas Family Code, §54.04(c)
(SECOND SENTENCE)

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THE DISPOSITION HEARING

Texas Family Code §54.04

WHAT HAPPENS IF THE COURT OR JURY GIVES
A “YES” ANSWER TO “THE GUIDING QUESTION”?

- The court or jury can then make a “disposition” finding.
- There are 3 Disposition Options:
 - Disposition Option 1: Place the respondent on probation at home in custody of his/her parents or guardian.
 - Disposition Option 2: Remove the respondent from home and place him/her on probation outside the home.
 - Disposition Option 3: Commit the respondent to TJJD, if the adjudication was for felony offense.

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THE DISPOSITION HEARING

Texas Family Code §54.04

DISPOSITION OPTION 1:

Place the respondent on probation at home in custody of parents.

- ESSENTIALLY, THIS IS THE STATUTORY DEFAULT DISPOSITION.
 - This Option is required by the 3rd sentence of Texas Family Code, §54.04(c),
UNLESS
 - The court or jury makes the removal from home findings set out in that sentence, namely:
 - “that the child, in the child’s home, cannot be provided the quality of care and level of support and supervision that the child needs to meet the conditions of probation.”

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THE DISPOSITION HEARING

Texas Family Code §54.04

DISPOSITION OPTION 2:

Removing the respondent from home and placing him/her on probation outside the home.

- IF THE COURT OR JURY MAKES THE REMOVAL FROM HOME FINDINGS IN §54.04(c), THEN THEY ARE AUTHORIZED TO ENTER DISPOSITION OPTION 2.
 - Juvenile judge makes this determination in an Ordinary Delinquency Case.
 - Jury makes this determination in a Determinate Sentence Case, *if the Respondent elected jury disposition.*
 - *If election not made prior to beginning of voir dire, then the judge decides.*

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THE DISPOSITION HEARING

Texas Family Code §54.04

DISPOSITION OPTION 3:

Commit the respondent to TJJD, if the adjudication was for a felony offense.

- IF THE COURT OR JURY MAKES THE REMOVAL FROM HOME FINDINGS IN §54.04(c), THEN THEY ARE AUTHORIZED TO ENTER DISPOSITION OPTION 3.
 - Juvenile judge makes this determination in an Ordinary Delinquency Case.
 - Jury makes this determination in a Determinate Sentence Case, *if the Respondent elected jury disposition.*
 - *If election not made prior to beginning of voir dire, then the judge decides.*

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THE DISPOSITION HEARING

Texas Family Code §54.04

OTHER REQUIRED FINDINGS FOR PLACEMENT OUTSIDE HOME

- It's in [respondent's] best interest to be placed outside his/her home.
- Reasonable efforts were made to prevent or eliminate the need for removing [respondent] from his/her home and to make it possible for the [respondent] to return to his/her home.
- The [respondent] cannot be provided the quality of care an level of support and supervision he/she needs to meet the conditions of probation.
 - **These Findings must be made by THE COURT, even in determinate sentence cases where the jury decides disposition.**

Texas Family Code §54.04(i)(1)

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THE DISPOSITION HEARING

Texas Family Code §54.04

“SPECIAL COMMITMENT FINDING” (POST 9-1-17)

- Before committing a juvenile respondent to TJJD in an **ordinary delinquency case**, the juvenile court is required to make a “Special Commitment Finding” that:
 - Respondent has a behavioral health or other special needs that cannot be met with the resources available in the community.
- The court must make a **Statement of Reasons** for its disposition decision in the disposition order.

Texas Family Code §54.04(d)(2) and §54.04013

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THE DISPOSITION HEARING

Texas Family Code §54.04

TRANSFERRING DISPOSITION TO DIFFERENT COUNTY

- The juvenile court can transfer a case to the county of residence of the juvenile respondent for disposition.

Texas Family Code §51.07

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MODIFICATION HEARINGS

Texas Family Code, §54.05

- **WITH THE EXCEPTION OF A TJJD COMMITMENT, THE JUVENILE COURT MAY MODIFY A DISPOSITION ORDER UNTIL:**
 - Respondent's 18th birthday (**ordinary delinquency case**).
 - Respondent's 19th birthday (**determinate sentence case**).
 - Respondent is “discharged” from probation prior to the 18th or 19th birthday.
- **A PETITION TO MODIFY DISPOSITION IS REQUIRED**
 - Petition may be filed by any “party” (or by the Court or a Juvenile Probation Officer).
 - Generally, filed by the State.

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MODIFICATION HEARINGS

Texas Family Code, §54.05

- **PETITION AND NOTICE REQUIREMENTS**
 - Family Code is vague regarding contents of Petition to Modify.
 - Does require “reasonable notice” be given to the parties.
 - **BEST PRACTICE: Follow the petition and notice requirement for an adjudication petition, including personal service on respondent.**
- **A HEARING IS REQUIRED ON A PETITION TO MODIFY DISPOSITION**
 - Burden of Proof on moving party (usually, the State).
 - Standard of Proof: Preponderance of the Evidence .
 - Same type of evidence in a disposition hearing is admissible.

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MODIFICATION HEARINGS

Texas Family Code, §54.05

- **WAIVER OF HEARING & PLEA BARGAINING**
 - Generally, a respondent can waive a modification hearing and reach an “agreed” settlement of the case with the State.
 - **EXCEPTION: The respondent cannot waive modification hearing when the State is seeking:**
 - Modification of probation conditions to require out of home placement for longer than 30 days; OR
 - Revocation of a felony probation and commitment to TJJD.
- **HEARING MAY BE BEFORE REFEREES AND ASSOCIATE JUDGES**
 - Same constraints regarding determinate sentence cases apply.
 - **Must be an “agreed disposition”**

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MODIFICATION HEARINGS

Texas Family Code, §54.05

EXTENDING PROBATION TERM IN ORDINARY DELINQUENCY CASE

- Juvenile court may extend a period of probation at any time during period of probation.
 - Court can do this on its own motion, **OR**
 - Court has up until one year past probation ending date to extend period of probation, if the State filed petition to revoke or modify probation before probation expired.
- **The State’s petition/motion to revoke or modify probation must be filed before the period of probation end.**
 - If petition/motion to revoke or modify is not timely filed, then the juvenile court has lost jurisdiction over the case.

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MODIFICATION HEARINGS

Texas Family Code, §54.05

EXTENDING PROBATION TERM IN ORDINARY DELINQUENCY CASE

- No extension of period of probation can go past respondent's 18th birthday.
- Remember, even though the State may be seeking a revocation the court can extend the period of probation instead of revoking probation.

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MODIFICATION HEARINGS

(Determinate Sentence Probation: Three Frequently Encountered Issues)

ISSUE NO. 1: WHAT HAPPENS WHEN THE PROBATION TERM EXTENDS PAST THE RESPONDENT'S 19TH BIRTHDAY?

- Court shall hold a hearing to determine one of following:
 - Whether to "discharge" the respondent from probation, OR
 - Whether to "transfer" the respondent to an adult district court .
- If "discharged" from probation, respondent's case is over.
- If "transferred," respondent continues under adult community supervision for remainder of probation term.

Texas Family Code, §54.04(q)

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MODIFICATION HEARINGS

(Determinate Sentence Probation: Three Frequently Encountered Issues)

ISSUE NO. 2: WHAT PROCEDURES MUST BE FOLLOWED TO REVOKE PROBATION UPON A VIOLATION OF PROBATION CONDITIONS?

- State must file a petition/motion to revoke probation before the respondent's probation term expires.
 - If petition/motion not filed before respondent's 19th birthday then the juvenile court has lost jurisdiction .
- Court must hold a hearing on State's petition/motion
 - State must prove by preponderance of the evidence that the respondent violated a reasonable and lawful order of the court.
- If probation violation(s) proven, court can commit respondent to TJJD for a term not to exceed the original sentence.
 - The court may assess a lesser term of confinement.

Texas Family Code, §54.05(j)

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MODIFICATION HEARINGS

(Determinate Sentence Probation: Three Frequently Encountered Issues)

ISSUE NO. 3: CAN THE JUVENILE COURT EXTEND THE TERM OF A DETERMINATE SENTENCE PROBATION?

- The juvenile court may extend a period of probation at any time before the period of probation expires.
 - Only restriction is that the term of probation plus any extension may not exceed 10 years.
 - If the term of probation would continue past the respondent's 19th birthday, then the court can take the following actions:
 - > **Discharge** the respondent from probation; OR
 - > **Transfer** the respondent to an adult district court; OR
 - > **Revoke** the respondent's probation and commit him/her to TJJD.

Texas Family Code, §54.04(q)

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OTHER DISPOSITIONAL POWERS OF THE JUVENILE COURT

- Handgun cases
- Driver's license suspension or denial
- Community Service
- Drug and alcohol awareness programs
- Other rehabilitative classes
- Restitution

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THE END

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**ADJUDICATION, DISPOSITION, AND MODIFICATION
HEARINGS**

**32ND ANNUAL JUVENILE LAW CONFERENCE
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ACKNOWLEDGMENTS & INTRODUCTION

“To the geniuses goes the credit.” I wish to acknowledge the genius of Professor Robert O. Dawson for his remarkable treatise on Texas Juvenile Law (and the amazing staff [*especially Principal Contributors Nydia Thomas and Kaci Singer*] at the Texas Juvenile Justice Department for continuing his work with the updates of his treatise over the years the past several years – including the latest 9th Edition published in 2018). Plain and simple, what I have done here is an offshoot of his (and their) great work. When you see the name “Dawson” herein, it is a reference to this work of genius. Also, kudos to all the presenters on Adjudication, Disposition, and Modification Hearings at previous Annual Juvenile Law Conferences. I have studied their work; and they are also a part of what follows below.

This paper is divided into three (3) Sections that are sprouted from Chapters 11, 12, and 13 of Dawson, my study of the Texas Family Code, my review of many cases interpreting the Code, my reading of many scholarly articles on various aspects of Texas Juvenile Law, and my practice of Juvenile Law as both a prosecutor and defense attorney. Section I relates to adjudication hearings under Family Code, Section 54.03. Section II relates to disposition hearings under Family Code, Section 54.04. Taken together, those Sections are the juvenile equivalent of the criminal trial. They generally set the primary course taken when children are referred to the juvenile justice system for alleged activities that violate the penal laws of the State. Section III of the paper discusses modification of disposition under Family Code, Section 54.05. I describe that Section as the juvenile counterpart to community supervision modification and/or revocation proceedings in the adult criminal justice system.

At the outset, it should be noted that this paper is not about the other procedural paths in the juvenile justice system, namely, supervisory caution, deferred prosecution, waiver of jurisdiction and transfer to criminal court (certification of a child to be tried as an adult), and commitment proceedings for a child (juvenile offender) determined to be suffering from a mental illness. Also, although throughout the paper there are references to “delinquent conduct” and “conduct indicating a need for supervision” [CINS], primarily the discussion herein relates to delinquent conduct cases in juvenile court – not CINS in the justice and municipal courts. For more information on the procedures in CINS cases, the reader is urged to read Dawson, (9th Edition, 2018) – Chapter 4.

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First Things First: Juvenile Court Jurisdiction

Under Title 3 of The Texas Family Code (also known as the Juvenile Justice Code), a child is defined as "... a person who is: (A) ten years of age or older and under 17 years of age; or (B) 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 [CINS] as a result of acts committed before becoming 17 years of age."¹ All references herein to "*juvenile respondent*" or "*respondent*" are intended to convey the same meaning as the above Family Code definition of a "*child*."

The Family Code also provides that the juvenile court has exclusive original jurisdiction over all proceedings involving children. Thus, any case relating to an allegation of delinquent conduct [or CINS] engaged in by a person who is a child [juvenile respondent] within the meaning of Title 3 must begin in a juvenile court.² The "**parties**" in a juvenile delinquency [or CINS] proceeding are the "the state, a child who is the subject of the proceedings ... or the child's parent, spouse, guardian, or guardian ad litem."³

Delinquent Conduct and Conduct Indicating a Need for Supervision (CINS)

Texas Family Code §51.03 defines delinquent conduct as:

"(1) ... conduct, other than a traffic offense, that violates a penal law of this state or of the United States punishable by imprisonment or by confinement in jail;

(2) conduct that violates a lawful order of a court under circumstances that would constitute contempt of that court in:

(A) a justice or municipal court;

(B) a county court for conduct punishable only by a fine; or

(C) a truancy court;

(3) conduct that violates Section 49.04, 49.05, 49.06, 49.07, or 49.08, Penal Code; or

(4) conduct that violates Section 106.041, Alcoholic Beverage Code, relating to driving under the influence of alcohol by a minor (third or subsequent offense)."

Section 51.03 also defines conduct indicating a need for supervision [CINS] as:

"(1) ... subject to Subsection (f), conduct, other than a traffic offense, that violates:

(A) the penal laws of this state of the grade of misdemeanor that are punishable by fine only; or

(B) the penal ordinances of any political subdivision of this state

(2) the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return;

(3) conduct prohibited by city ordinance or by state law involving the inhalation of the fumes or vapors of paint and other protective coatings or glue and other adhesives and the volatile chemicals itemized in Section 485.001, Health and Safety Code;

(4) an act that violates a school district's previously communicated written standards of student conduct for which the child has been expelled under Section 37.007(c), Education Code;

(5) notwithstanding Subsection (a)(1), conduct described by Section 43.02(a) or (b), Penal Code; or

¹ Tex. Fam. Code, §51.02(2).

² Texas Family Code, §51.04(a).

³ Tex. Fam. Code, §51.02(10).

(6) notwithstanding Subsection (a)(1), conduct that violates Section 43.261, Penal Code.”

Essentially, then, delinquent conduct involves either felony penal violations or Class A and Class B misdemeanor penal violations – offenses that are punishment by confinement in prison or jail, respectively; and, CINS involves Class C misdemeanor penal violations – offenses that are punishable by fine only. As noted above, the primary focus of this paper is “delinquent conduct.” For more information on CINS, the reader should see Robert O. Dawson, *Texas Juvenile Law*, 9th Edition – 2018.

SECTION I

THE ADJUDICATION HEARING

What is an Adjudication Hearing?

As with criminal cases, juvenile cases are split into two phases: the adjudication phase and the disposition phase. The adjudication phase is referred to as an “**adjudication hearing**” – which is essentially a trial on the merits of the penal charge(s) alleged in the State’s Juvenile Delinquency [or CINS] Petition. Again, as with criminal cases, an adjudication hearing may be held before the juvenile court (**court trial**) or before a jury (**jury trial**). In a court trial (*an adjudication hearing before the juvenile judge – whether it’s a plea pursuant to a plea bargain agreement or a full-blown evidentiary hearing with live witnesses*), jeopardy attaches when both sides have announced ready and the respondent has entered a plea to the petition.⁴ In a jury trial, jeopardy attaches when the jury is empaneled and sworn.⁵ If, at the conclusion of the adjudication hearing, the respondent is found to have engaged in delinquent conduct [or CINS] (*a finding of “True” on the charges – the equivalent of a finding of guilt – whether such finding is based on a plea of “True” pursuant to a plea bargain or whether the finding is based on the evidence presented during a full-blown evidentiary hearing with live witnesses*), then the court or jury must next decide whether or not a disposition (*the equivalent of punishment*) should be made in the case. The disposition phase of a juvenile case will be discussed in Section II below.

⁴*State v. Torres*, 805 S.W.2d 418 (Tex.Crim.App. 1991)

⁵*In re C.J.F.*, 183 S.W.3d 841 (Tex.App. – Houston [1st Dist.] 2005, no pet.)

There are various procedural paths that can be employed to deal with a juvenile who is referred to juvenile court on an allegation of delinquent conduct [or CINS]. The decision regarding which path a juvenile case takes is within the discretion of the prosecuting authority (generally the District Attorney or, in some Texas counties, the County Attorney – hereinafter referred to as State). It is that authority who decides whether a juvenile delinquency case will be prosecuted as an *ordinary delinquency case*⁶ or under the *determinate sentence* law.⁷ However, the Family Code sets up two key constraints on the ability of the State to prosecute a juvenile under the determinate sentence law. First, the State must obtain approval for such a prosecution from a grand jury and may only seek such approval for certain enumerated offenses.⁸ Secondly, the State is prohibited from referring a petition that alleges that certain sex offenses unless the juvenile respondent is more than three years older than his/her alleged victim.⁹

The Adjudication Petition and the Standard of Proof in Adjudication Hearings

When the State seeks a finding of delinquency [or CINS] against a child (juvenile respondent), it must initiate the action by filing a charging document (known as a petition) in the juvenile court [or in a justice of the peace or municipal court].¹⁰ The petition must state “with reasonable particularity the time, place, and manner of the acts alleged and the penal law or standard of conduct violated by the acts.”¹¹ The State can allege more than one offense in its petition and does not have to plead the law of parties. If there is a fatal variance between what the State alleges in its’ delinquency [or CINS] petition and what the State proves at the adjudication hearing, the juvenile court [or the

⁶Essentially, an “*ordinary delinquency case*” is a misdemeanor or felony case in which the jurisdiction of the juvenile court ends at the age of 18; or a felony case in which the juvenile respondent can be committed to the Texas Juvenile Justice Department (TJJD) until the age of 19.

⁷The Texas Determinate Sentencing Law is set out in Tex. Fam. Code §54.045. A “*determinate sentence case*” is a felony case in which a juvenile respondent can be sentenced to TJJD for up to 10, 20, or 40 years (depending on the degree of the felony offense); and is eligible for transfer from TJJD to the Texas Department of Criminal Justice Institutional Division (TDCJ-ID) at the age 19. If a juvenile respondent is assessed a determinate sentence of 10 years or less and the sentence is probated, he/she could remain subject to the jurisdiction of the juvenile court until the age of 19.

⁸Tex. Fam. Code §53.045.

⁹See Tex. Fam. Code §53.045(e)

¹⁰See Tex. Fam. Code §53.04 for a listing of all the things that are required to be stated in the petition.

¹¹Tex. Fam. Code §53.04(d)

justice or municipal court] would be required to find the charges “Not True” and acquit the respondent.¹²

The provisions concerning specificity regarding the charges alleged in the petition are consistent with the U.S. Supreme Court’s holding in the landmark case of *In re Gault*,¹³ wherein the Supreme Court held that the U.S. Constitution requires that a juvenile respondent be provided with adequate notice of the charges against him/her – meaning, a specification of the facts that the State intends to prove and sufficient time in advance of an adjudication hearing to prepare for a defense to the State’s allegations. Also, consistent with the Supreme Courts’ holding in *In re Winship*,¹⁴ the Texas Family Code sets the State’s burden in a juvenile delinquency [or a CINS] prosecution at **proof beyond a reasonable doubt** and specifically provides that a juvenile respondent is **presumed innocent** of any charges alleged against him/her in a juvenile delinquency petition.¹⁵

The Requirement of an Adjudication Hearing

Regardless of whether the State proceeds with a juvenile case as an *ordinary delinquency case* or a *determinate sentence case*, absent a dismissal [referred to in the juvenile arena as a “nonsuit”] of the charged offense, an **“adjudication hearing”** will be a required step in the prosecution of the case.¹⁶ That is the mandate of Section 54.03(a) of the Texas Family Code, which provides that:

A child [juvenile respondent] may be found to have engaged in delinquent conduct or conduct indicating a need or supervision **only after an adjudication hearing conducted in accordance with the provisions of this section.** (*Emphasis Added*)

The only question to be resolved at an **“adjudication hearing”** is whether the juvenile

respondent engaged in the delinquent conduct alleged in the petition. But, what exactly, do “*the provisions*” of §54.03(a) require in order to have a legally sufficient “*adjudication hearing?*”

Texas court rulings on that question hold that an **“adjudication hearing”** must be an inquiry on the record and on the merits of the allegation(s) set out in the State’s petition. These court rulings (and the core principles espoused in the Texas Family Code) envision a **plenary evidentiary hearing** where: (1) the State (and the juvenile respondent, if he/she so wishes) can call witnesses to present testimony and other evidence relating to the allegations in the State’s petition; (2) the court or jury can pass judgment on the credibility of the witnesses, evidence, and the allegations; and (3) the court and the parties can determine what is in the best interest of the public and the respondent. Court decisions also suggest that any procedure other than a plenary hearing on the matter of adjudication (i.e., resolving juvenile delinquency allegations merely by written filings and/or other documentary evidence or materials by the parties or the adoption of some sort of precipitous process such as a summary judgment procedure) would contravene the express provisions of Family Code §54.03(a), and the general purposes of the Juvenile Justice Code (Title 3 of the Family Code).¹⁷ In short, a plenary hearing is required for a legally sufficient adjudication hearing and would provide the court with a legal basis for taking action on the State’s petition. So, can an adjudication hearing be waived?

No Waiver and Stipulating the Evidence

Since an adjudication hearing is required in a juvenile delinquency proceeding, it follows that **a juvenile respondent cannot waive the hearing**.¹⁸ However, recognizing the utility of expediting cases, the Texas Legislature (with the adoption of the Family Code) and Texas courts have determined that the “requirement” of an adjudication hearing does not mean that there must be a full-blown hearing with witnesses. Thus, if a juvenile

¹²Id., See, also, *L.G.R. v. State*, 724 S.W.2d 775 (Tex. 1987), *In the Matter of S.D.W.*, 811 S.W.2d 739 (Tex.App. – Houston [1st Dist.] 1991, no writ).

¹³383 U.S. 546, 86 S.Ct. (1967)

¹⁴397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).

¹⁵See, Tex. Fam. §54.03(e) and (f) which provides in part: “The child shall be presumed to be innocent of the charges against the child and no finding that a child has engaged in delinquent conduct or conduct indicating a need for supervision may be returned unless the state has proved such beyond a reasonable doubt. In all jury cases the jury will be instructed that the burden is on the state to prove that a child has engaged in delinquent conduct or is in need of supervision beyond a reasonable doubt.”

¹⁶See, Tex. Fam. Code §54.03.

¹⁷See, e.g., *R.E.M. v. State*, 569 S.W.2d 613 (Tex.Civ. App. – Waco 1978, writ ref’d n. r.e.). See also, Tex. Fam. Code §51.01, which sets out the purposes of the Juvenile Justice Code. See, also, Robert O. Dawson, *Texas Juvenile Law* (Chapter 13) – 9th Edition (2018)

¹⁸See, e.g., *In the Matter of N.S.D.*, 555 S.W. 2d 807 (Tex.Civ.App. – El Paso 1977).

respondent does not wish to contest the petitioned allegations, he/she and the State can agree to a resolution of a case by means of a plea bargain agreement, which is generally effectuated by a **Plea and/or Stipulation of Evidence**. The respondent and his/her attorney (upon satisfying the requirements of Family Code §51.09) may waive the juvenile's right to a jury trial and the right to confront and/or call witnesses (and all other rights) and agree to the witnesses' testimony that would support the allegations in the State's petition. When this occurs, the plea agreement and Stipulation of Evidence provides the juvenile court the evidentiary basis needed for an adjudication. In effect, the Stipulation of Evidence amounts to a judicial confession that the respondent committed the petitioned offense. By stipulating to the evidence, the respondent is not waiving the adjudication hearing, but rather expediting it.¹⁹ The proceeding in which an "agreement" between the State and the juvenile respondent is accepted by the juvenile court (Plea) constitutes the "Adjudication Hearing."

Respondent's Presence, Appearance of Parent or Guardian, and Appointment of Guardian ad Litem, Appointment of Counsel, and Service of Process

It goes without saying that for the juvenile court to conduct an adjudication hearing, the juvenile respondent must be present before the court. The Family Code requires that **the respondent must be personally served** with a copy of the State's petition and a summons providing him/her with notice of the charges and when to appear before the court.²⁰ The importance of this "service" requirement is notably demonstrated by court decisions holding that personal service of the petition and summons on a juvenile respondent is a prerequisite to giving the juvenile court jurisdiction over the case.²¹ Moreover, court decisions have held that **a respondent cannot waive service**; and that the court record must affirmatively show that the respondent was personally served.²² Family Code §53.06 also

requires that a juvenile respondent's parent, guardian or custodian, guardian ad litem, and "any other person who appears to the court to be a proper or necessary party to the proceedings" also be served with a copy of the State's petition and a summons to appear before the juvenile court.

The parent, managing conservator, court-appointed custodian and guardian of a juvenile respondent are also required to attend court hearings affecting the respondent. This includes adjudication hearings, disposition hearings, and modification hearings.²³ If a juvenile respondent appears before the juvenile court without a parent or guardian (*or if the parent or guardian appears incapable or unwilling to make decisions in the best interest of the child regarding the juvenile delinquency proceeding*), then Family Code provides that the court shall appoint a guardian ad litem to protect the interests of the child. The respondent's attorney (*but not a law-enforcement officer, probation officer, or juvenile court employee*) may serve as his/her guardian ad litem.²⁴ If the respondent does not have an attorney, the court is required to appoint an attorney to represent him/her.²⁵

Procedural and Substantive Matters in Adjudication Hearings

In an adjudication hearing a juvenile respondent is afforded all the constitutional protections, and the due process and due course of law procedural rights given to adults in criminal cases. These protections are delineated throughout the various sections of the Family Code. Accordingly, in an adjudication hearing, the respondent is afforded: (1) the right to assistance by effective counsel; the right to the presumption of innocence; the Fifth Amendment privilege against self-incrimination; the right to confrontation and cross-examination of witnesses; the right to corroboration of an extra judicial statement; the benefit of the exclusionary rule – hence, the right to suppression of illegally seized evidence, including a confession that is involuntary or that was obtained in violation of Family Code §51.095; the benefit of the affirmative defenses set out in the Texas Penal Code and the benefit of the rules regarding

¹⁹Id. See, also, *In the Matter of J.L.*, 664 S.W.2d 119 (Tex.App. – Corpus Christi 1983, no writ);

²⁰Tex. Fam. Code §53.06(e).

²¹*In the Matter of T.T.W.*, 532 S.W.2d 418 (Tex.Civ.App. – Texarkana 1976, no writ).

²²*In the Matter of D.M.W.*, 562 S.W.2d 851 (Tex. Sup. 1978).

²³Tex. Fam. Code §51.115

²⁴Tex. Fam. Code §51.11.

²⁵Tex. Fam. Code §51.101 and §51.102.

accomplice testimony.²⁶ Additionally, the Family Code provides that unless it specifically states otherwise the Texas Rules of Evidence applicable in criminal cases and in Chapter 37 of the Texas Code of Criminal Procedure apply to juvenile adjudication hearings,²⁷ with one exception – namely, that hearsay statements of children under 12 years of age who are victims of assaultive and sexual offenses are admissible.²⁸

These protections are not only the result of public policy enacted by the Texas State Legislature (i.e., the Family Code), they also emanate from several foundational case decisions by the United States Supreme Court, the Texas Supreme Court, the Texas Court of Criminal Appeals, and our Texas Appellate Courts. For an excellent dissertation on many of these cases and the constitutional due process and due course of law guarantees afforded to juvenile offenders in Texas, the juvenile law practitioner should read the remarkable opinion of the Texas Court of Criminal Appeals in *Lanes v. State*, 767 S.W.2d 789 (Tex.Crim.App. 1989).

Right to Jury Trial, Jury Size, and Peremptory Challenges

As previously noted, in Texas, a juvenile respondent has a **right to a jury trial** in an adjudication hearing. However, unlike for adults, this right is not guaranteed by the U.S. Constitution.²⁹ Its source is the Texas Constitution and the Texas Family Code, which says that in juvenile cases trial *shall* be to a jury unless the juvenile respondent waives his/her right to a jury.³⁰ In an *ordinary delinquency case* [and in a CINS case], however, the right to a jury trial applies only to the adjudication hearing. There is no right to a jury at the disposition hearing in such cases.³¹ In contrast, the right to a jury on disposition **does apply** in a *determinate sentence case*.³² It is important to note, however, that in a determinate sentence case, the respondent is required to make his/her decision to have the jury determine disposition in writing before jury

selection begins.³³ Like an adult defendant, a juvenile respondent can waive his right to a jury trial so long as the waiver complies with Family Code §51.09 – meaning that the waiver must be made by both the juvenile respondent and his/her attorney. But, unlike in criminal cases, the right to a jury trial in juvenile delinquency [and CINS] cases belongs exclusively to the juvenile respondent. The State does not have a right to a jury trial in a juvenile delinquency proceeding.³⁴

The size of the jury and the number of peremptory challenges in a juvenile case depends on whether the designated juvenile court is a county or district court.³⁵ If it is a district court, then the jury will consist of 12 persons, unless the district court is trying a misdemeanor case in which event the jury shall consist of 6 persons.³⁶ If the designated juvenile court is a county court, then the jury will consist of 6 persons.³⁷ If the case involves determinate sentencing, then the Family Code requires a 12 member jury.³⁸ And, it should be noted that a county court does not have jurisdiction to hear determinate sentence case. The Family Code specifically provides that in a county where a *county court* is designated as the juvenile court, at least one other court shall be designated as the juvenile court.³⁹ A reasonable inference from this provision is that the “other” designated court should be a court that has jurisdiction to hear felony cases.

Perhaps more so than any other exemplification of the quasi-civil/quasi-criminal nature of our juvenile justice system is the matter of peremptory strikes in a juvenile case. Family Code §51.17(a) states that “the Texas Rules of Civil Procedure govern proceedings” under the Juvenile Justice Code. Therefore, pursuant to the Rules of Civil Procedure, in an *ordinary delinquency case* [or in a CINS case], the State and the juvenile respondent are each entitled to 6 strikes in a case tried in a juvenile court that is a district court and 3 strikes in a case tried in a juvenile court that is a county court, or county court at law.⁴⁰ The rules are different, however, for a *determinate sentence case*. Family Code §54.03(c) provides that in a determinate

²⁶Tex. Fam. Code Ann. § 51.10(b), §54.03(e), §51.095; *In re Gault*, 387 U.S. 1 (1967); *In the Matter of J.R.R.*, 696 S.W.2d 382 (Tex.Sup. 1985); *In the Matter of P.A.S.*, 566 S.W.2d 14 (Tex. Civ. App. – Amarillo 1978); *In the Matter of R.A.B.*, 525 S.W.2d 892 (Tex.Civ.App. – CorpusChristi 1975, no writ);

²⁷Tex. Fam. Code Ann. § 51.17(c);

²⁸See, Tex. Fam. Code §54.03(d) and §54.031.

²⁹See, *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971).

³⁰Tex. Fam. Code §54.03(c). See, also, Texas Constitution, Article 1, Section 15, which states “[t]he right of trial by jury shall remain inviolate;” and Tex. Fam. Code §54.03(b)(6).

³¹Tex. Fam. Code §54.04(a).

³²Id.

³³See, Footnote 66, *infra*.

³⁴See, Texas Attorney General Opinion No. JC-0242 (2000).

³⁵Tex. Fam. Code Ann. §51.04 and §54.03(c).

³⁶Id. See, also, Tex. Crim. Proc. Ann. Article 33.01(b).

³⁷Id.

³⁸Tex. Fam. Code §54.04(c).

³⁹See, Tex. Fam. Code §51.04(c).

⁴⁰Texas Rules of Civil Procedure Rule 233

sentence case, a jury is selected in accordance with the requirements of the Texas Code of Criminal Procedure (TCCP), which grants each party a greater number of strikes than the Rules of Civil Procedure. TCCP, Article 35.15(c) provides that when a district court is trying a non-death penalty felony case, each side gets 10 peremptory strikes. The offenses listed in Family Code §53.045 as eligible for determinate sentencing are all non-death penalty felony cases. Given the U.S. Supreme Court's decision in *Roper v. Simmons*,⁴¹ this includes a capital murder offense. Therefore, if the designated juvenile court is a district court trying a non-death penalty felony case on a determinate petition approved by a grand jury [a *determinate sentence case*], then both the State and the respondent are each entitled to 10 peremptory strikes.

Required Judicial Admonishments in Adjudication Hearings

The Family Code requires that the juvenile court judge give certain admonitions to the juvenile respondent and his/her parent, guardian, or guardian ad litem. Specifically, Family Code, §54.03(b) states that:

At the beginning of the adjudication hearing, the juvenile court judge shall explain to the child and his parent, guardian, or guardian ad litem:

- (1) the allegations made against the child;
- (2) the nature and possible consequences of the proceedings, including the law relating to the admissibility of the record of a juvenile court adjudication in a criminal proceeding;
- (3) the child's privilege against self-incrimination;
- (4) the child's right to trial and to confrontation of witnesses;
- (5) the child's right to representation by an attorney if he is not already represented; and

⁴¹543 U.S.551 (2005).

- (6) the child's right to trial by jury.

These six admonishments are required in every case – whether it's an *ordinary delinquency case* or a *determinate sentence case*.

Admonishments Regarding the Nature of the Charges and Juvenile Court Proceedings

Clearly, fundamental *due process* (and in Texas, *due course of law*) requires that the juvenile court judge explain the nature and consequences of the petitioned allegations and juvenile court proceedings to the respondent. The key word in §54.03(b) is “**explain.**” This is straightforward. The judge should not just *tell* the respondent these rights. He/she should make sure that the respondent *understands* them. Regarding §54.03(b)(1) and (2), the judge should make sure that the respondent understands the implication(s) of the charges against him/her and what could happen to the respondent upon an adjudication of engaging in delinquent conduct for committing the charged offense(s). Some court decisions have held (and Dawson recommends) that the juvenile court should admonish the respondent about lesser included offenses.⁴² However, the court is not required to admonish on every possible lesser included offense.⁴³

Admonishments Regarding the Admissibility of a Juvenile Record

As noted above, the juvenile judge is required to admonish the respondent about the admissibility of a juvenile court adjudication in a subsequent criminal proceeding. Essentially, this means that the court should *explain* to the respondent (*and make sure that the respondent understands*) that an adjudication for a felony or a misdemeanor punishable by confinement in jail may be admitted against him/her in the penalty phase of a future criminal case committed by the respondent after he/she reaches adulthood. Additionally, if the case involves an allegation of a felony offense the judge is required to *explain* to the respondent that if he/she is adjudicated on the charge, and

⁴²See, Section 54.03(f) of the Family code which states that... “(a) child may be adjudicated as having engaged in conduct constituting a lesser included offense as provided by Articles 37.08 and 37.09 of the Code of Criminal Procedure; See also, *A.E.M. v. State*, 552 S.W.2d 952 (Tex.Civ.App. – San Antonio 1977, no writ); *In the Matter of A.N.*, 683 S.W.2d 118 (Tex.App. – San Antonio 1984, writ dismissed); See, also, Dawson, Texas Juvenile Law (Chapter 11) – 9th Edition (2018).

⁴³*In re D.L.K.*, 690 S.W.2d 654 (Tex.App – Eastland 1985, no writ)

if the disposition resulting from the adjudication is a commitment to the **Texas Juvenile Justice Department (TJJD)**, the adjudication could be used to enhance the range of punishment in any future criminal case committed by the respondent after he/she reaches adulthood.⁴⁴ Parenthetically, although Family Code, §54.03(b)(2) speaks of “the admissibility of the record of a juvenile court adjudication in a *criminal proceeding*,” it’s important to note that §51.13(b)(1) provides that a “juvenile adjudication or disposition” may be used in “*subsequent proceedings*” under the Juvenile Justice Code in which the juvenile respondent is a party. Hence, though not specifically required by §54.03(b), an admonishment regarding §51.13(b)(1) may also be a wise practice. As I see it, these required “*explanations*” go to the heart of the purposes set out in Family Code relating to the “rehabilitation” of juvenile offenders.⁴⁵ Hopefully, knowing that a juvenile adjudication or disposition could be used in these ways will encourage and inspire young offenders to stay out of trouble in the future.

Finally, regarding §54.03(b)(3 thru 6), the judge should also make sure that the juvenile respondent not only knows that he/she has these rights but also *understands* what they mean.

Additional Admonishments

In addition to the §54.03(b) mandatory admonishments, there are other admonishments that the juvenile court may be required to give to a juvenile respondent. The nature of these admonishments may differ – depending on whether the case is an *ordinary delinquency case* or a *determinate sentence case* and/or depending on whether the juvenile and the State have reached a plea bargain agreement in the case. These additional admonishments concern the following:

(1) Ordinary Delinquency Cases

In *ordinary delinquency cases*, the court must advise the respondent that the possible dispositions in the case include

probation at home or in an out-of-home placement until his/her 18th birthday. Also, if the offense is one for which commitment is possible (*a felony*), then the judge must advise the respondent about the possibility of him/her being committed to TJJD until age 19 in the event of an adjudication.

(2) Determinate Sentence Cases

In *determinate sentence cases*, the court must advise the respondent that the possible dispositions include probation for up to 10 years if he/she receives a sentence of 10 years or less or a sentence of up to 40 years (*if the most serious charge in the petition is a capital, aggravated controlled substance, or first degree felony*), up to 20 years (*if the most serious charge in the petition is a second degree felony*), or up to 10 years (*if the most serious charge in the petition is a third degree felony*).⁴⁶

(3) Plea Agreement Admonitions and the Right to Appeal

As previously noted, plea bargain agreements between the State and a juvenile respondent are permissible in juvenile delinquency proceedings. Generally, such agreements are *effectuated* by way of a Stipulation of Evidence – an agreement between the State and the respondent regarding a final resolution of the case. Generally, the respondent will enter a plea of “true” (guilty) to the petitioned offense(s) as a part of his/her agreement with the State. When there is a plea agreement, then in addition to the aforementioned §54.03(b) admonishments, the juvenile court is required to advise the respondent as follows: (1) that the court is not required to accept the agreement; and (2) that if the court decides not to accept the agreement, the respondent will be given an opportunity to withdraw the plea or stipulation of evidence.⁴⁷ It’s important to remember that if the juvenile court rejects a plea agreement, then “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”.⁴⁸ On the other hand, if the court does

⁴⁴See, Tex. Fam. Code §51.13(d). See, also, Texas Rules of Evidence Rule 609(d) regarding use of prior juvenile adjudications for purposes of impeachment.

⁴⁵See, Tex. Fam. Code §51.01.

⁴⁶Tex. Fam. Code §54.03(d)(3)(A),(B), and (C)

⁴⁷Tex. Fam. Code §54.03(j); *In the Matter of M.D.G.*, 180 S.W.3d 747 (Tex.App.-Eastland 2005); *In the Matter of E.Q.*, 839 S.W.2d 144 (Tex.App. – Austin 1991)

⁴⁸*Id.*

accept a plea agreement between the State and the respondent, the Family Code provides that the court shall make a disposition in the case in accordance with the terms of the agreement.⁴⁹ Lastly, the Family Code generally permits a juvenile respondent to appeal a juvenile court order regarding a finding of delinquent conduct [or CINS].⁵⁰ However, if the court order is based on a plea of true by the respondent in conformity with a plea-bargain agreement and a Stipulation of Evidence with the State that was accepted by the court, then he/she is prohibited from appealing unless the court grants permission to appeal or the appeal relates to a challenge to the denial of written pretrial motions (*such as a motion to suppress a statement or a search*) heard by the court before the plea. Before accepting a plea of true from a juvenile respondent entered pursuant to a plea agreement and Stipulation of Evidence, the juvenile court is required to inform the respondent about this prohibition on his/her right to appeal.⁵¹

Consequences of Failure to Admonish

The failure to comply with the statutory admonition requirements may result in reversal of an adjudication. However, Texas courts have held that the failure to admonish does not constitute reversible error if the respondent does not properly object to the failure to admonish in the trial court.⁵² Any objection must be made at the time of the court's failure to comply with the statutory admonition requirements.⁵³ Also, it's important to note that the Texas Supreme Court has held that issues relating to an admonition deficiency claim are to be subjected to a harm analysis.⁵⁴

When Admonishments Are Not Required

Noticeably, there is nothing in the §54.03(b)(2) admonishments that requires: (1) that the juvenile court advise a respondent that after an adjudication of delinquent conduct, it is possible that a "no disposition" [discussed below] finding may be returned by the court or jury in the disposition phase of the case; (2) that the juvenile court advise the respondent about the immigration

consequences of an adjudication of delinquent conduct; or (3) [in a relevant case] that the juvenile court advise a respondent on the matter of sex offender registration. Therefore, Texas appellate courts have held the juvenile court is not required to give admonishments on these matters.⁵⁵ A review of some of the cases on these matters indicates that there are three primary rationales for these holdings. First, since §54.03 does not specifically require admonishments on these matters, the juvenile court is not required to give them. And, Texas appellate courts have not been inclined to create new admonishments that have not been adopted by the Legislature in the Family Code. Secondly, the cases suggest that these matters relate to collateral consequences about which judicial admonishments are not constitutionally required.⁵⁶ Finally, the third rationale articulated in the case of *In the Matter of E.J.G.P.* (cited in Footnote 55) is based on the court's review of a federal immigration statute – specifically, 8 U.S.C.A. §1227(a)(2)(B)(i) (1999). The court noted that under this law, the definition of a deportable alien includes "any alien who at any time after admission has been **convicted** of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in Section 802 of Title 21), other than a single offense involving possession for one's own use of 30 grams or less of marijuana." (Emphasis Added). Then, citing Family Code §51.13(a) [*which provides that "an order of adjudication or disposition in a proceeding under this title is not a conviction of crime"*], the court reasoned that since a juvenile adjudication is not a conviction and since the federal statute "addresses convictions and not adjudications, it is certainly arguable that this statute does not apply to juvenile defendants." Although this is an interesting argument, in view of the Supremacy Clause of the U.S. Constitution and the Doctrine of Preemption,⁵⁷ it appears

⁴⁹Tex. Fam. Code §54.03(j).

⁵⁰Tex. Fam. Code §56.01(c)(1)(B),(C), and (D)

⁵¹Tex. Fam. Code §54.034 and §56.01(n)

⁵²See, e.g., *In the Matter of M.D.T.*, 153 S.W.3d 285 (Tex. App. – El Paso 2004).

⁵³*In the matter of C.O.S.*, 988 S.W.2d 760 (Tex.1999).

⁵⁴*Id.*

⁵⁵See, *In the Matter of M.A.M.*, No. 04-97-00795-CV (Tex.App. – San Antonio 1998) regarding the matter of not having to admonish regarding the "No Disposition" possibility; *In re B.G.M.*, 929 S.W.2d 604 (Tex.App. – Texarkana 1996, no writ) regarding the matter of not having to admonish regarding the matter of Sex Offender Registration; and *In re E.J.G.P.*, 5 S.W.3d 868 (Tex.App.-El Paso 1999, no pet.); but see *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010) and *Ex Parte Tanklevskaya*, 361 S.W.3d 86, (Tex.App. – Houston [14th Dist.] 2011) regarding the matter of not having to admonish on the immigration consequences of an adjudication of delinquent conduct.

⁵⁶*Id.*

⁵⁷The Supremacy Clause is found in Article IV of the U.S. Constitution. It states that federal statutes, treaties, and the Constitution shall be treated as "the supreme law of the land." The Doctrine of Preemption is derived from the Supremacy Clause, meaning that federal law preempts state laws, even when the laws differ.

(again, keeping with Dawson's advice) that perhaps the "safest course of action" for juvenile courts is to advise juvenile respondents of the immigration consequences of an adjudication for delinquent conduct. A good practice would be to follow the procedure used by the State in Harris County when it enters into a Stipulation of Evidence with a juvenile respondent. They use a written immigration warning which is included in the paperwork that is filed to effectuate the plea agreement with the respondent. A copy of the Immigration Warnings used by the Harris County juvenile courts is included at the end of this paper as Attachment 1.

Juvenile Court Referees and Associate Judges in Adjudication Hearings

An adjudication hearing (even a jury trial) in an *ordinary delinquency case* may be held before a referee or associate judge, so long as the parties to the proceeding are informed that they are entitled to have the hearing before the juvenile court judge and none of the parties object to the referee or associate judge conducting the hearing.⁵⁸ However, if the hearing relates to a *determinate sentence case*, the referee or associate judge is only allowed to conduct an adjudication hearing for the purpose of taking a plea or stipulation of evidence (plea of "true" pursuant to a plea bargain agreement) that has been agreed upon between the state and the juvenile respondent. Following the taking of such an agreed-upon plea or stipulation in a determinate sentence case, the referee or associate judge's "written findings and recommendations regarding the plea or stipulation of evidence" are transmitted to the juvenile court judge for consideration. "The juvenile court judge may [then] accept or reject the plea or stipulation of evidence in accordance with Section 54.03(j)."⁵⁹ The rationale for allowing "agreed dispositions" in determinate sentence cases to be heard by referees and associate judges appears to be judicial economy.

SECTION II

THE DISPOSITION HEARING

What is a Disposition Hearing?

⁵⁸ Tex. Fam. Code §54.10(a)

⁵⁹ Tex. Fam. Code, §54.10(e) and (f)

To put it simply, a "**Disposition Hearing**" is a hearing at which a decision is made about what to do with a juvenile respondent who has been adjudicated for engaging in delinquent conduct [or CINS]. If at the conclusion of the adjudication hearing the respondent is found to have engaged in delinquent conduct [or CINS], then a "**Disposition Hearing**" is required.⁶⁰ The very first thing that the Family Code says about the disposition hearing is that it "*shall be separate, distinct, and subsequent to the adjudication hearing.*"⁶¹ But that does not mean that the disposition hearing has to be held on a different day than the adjudication hearing. The juvenile court judge has the discretion to hold the disposition hearing either immediately after the adjudication hearing is concluded or schedule it for a different day.⁶²

What Can Happen at The Disposition Hearing?

As noted above, the Disposition Hearing is the equivalent of the punishment or sentencing phase of a criminal trial. Hence, such a hearing can only take place after a juvenile respondent has been adjudicated (found to have engaged in delinquent conduct). The details of what is required for a juvenile court to enter a disposition order will be discussed below. For now, suffice it to say that if a court is authorized to issue such an order, the sentence it imposes will differ depending on the nature of the case and the level of the offense for which a juvenile respondent was adjudicated. If the respondent is adjudicated on a **misdemeanor offense** [*which will always be an ordinary delinquency case*] that is punishable by confinement in jail (Class A and Class B misdemeanors), then the court can place the respondent on probation for any period up until his/her 18th birthday. In such a case, a possible condition of probation could be a placement outside the respondent's home. Under current law, there is no circumstance under which a juvenile respondent who is adjudicated for a misdemeanor offense can be committed to TJJD

If the respondent is adjudicated on a **felony offense** (*whether it's an ordinary delinquency case or a determinate sentence case*), the juvenile court can place the respondent on

⁶⁰ Tex. Fam. Code §54.03(h)

⁶¹ Tex. Fam. Code §54.04.

⁶² Tex. Fam. Code §54.03(h)

probation. In an *ordinary delinquency case*, the probation term could be up until his/her 18th birthday. In a *determinate sentence case*, the probation term could be for a period of up to 10 years and may extend beyond the respondent's 19th birthday. In either case the court could require a placement outside the respondent's home as a condition of probation. If the adjudicated felony is for conduct described by Family Code §54.0405(b) [sexual offense], the minimum probation period that the court can order is two years.⁶³

After a *felony* adjudication (*whether it's an ordinary delinquency case or a determinate sentence case*), the juvenile court (instead of placing a respondent on probation) can commit the respondent to TJJD. Only juvenile offenders who are adjudicated for felony offenses or who have violated a felony probation may be committed to TJJD. The details of what is required for the court to enter a disposition order that either places a respondent on probation with a condition of placement outside his/her home or commits a respondent to TJJD will be discussed below.

Who Hears Disposition: Judge or Jury?

The question of whether the court or jury decides disposition depends on the nature of the case – that is, whether it's an *ordinary delinquency case* or a *determinate sentence case*. With regard to this, the Family Code sets forth three important mandates: First, a juvenile respondent has “*no right to a jury at disposition unless [he/she is] in jeopardy of a determinate sentence.*”⁶⁴ Secondly, if the case involves determinate sentencing, the respondent is “*entitled to a jury of 12 persons.*”⁶⁵ And, thirdly, if the case involves determinate sentencing, the respondent must make the decision to have the jury determine disposition “*in writing before the commencement of voir dire examination of the jury panel.*”⁶⁶ **Therefore, in ordinary delinquency cases, it is always the court that decides disposition. In a determinate sentence case, the court only decides disposition when the respondent fails to elect jury disposition before jury selection**

⁶³Tex. Fam. Code §54.04(p)

⁶⁴Tex. Fam. Code §54.03(b)(6) and (c).

⁶⁵Id.

⁶⁶Tex. Fam. Code §54.04(a).

begins.⁶⁷

As previously noted, a disposition hearing may be held before a referee or associate judge so long as the parties to the proceeding are informed that they are entitled to have the hearing before the juvenile court judge and none of the parties object to the referee or associate judge conducting the hearing. But, remember, if it is a *determinate sentence case*, the referee or associate judge can only take an “**agreed plea.**” If the disposition hearing is being heard by a jury, then it cannot be held before the referee or associate judge.⁶⁸

The Respondent's Rights at a Disposition Hearing

In a disposition hearing, the juvenile respondent has the same due process and due course of law rights he/she has in an adjudication hearing. Though not intended to downgrade other rights, paramount among a respondent's disposition hearing rights are the right against self-incrimination, the right to confront witnesses, the right to present evidence and witnesses, **and** the right to present mitigating and extenuating evidence. Finally, it's important for the juvenile law practitioner to remember that adjudication and disposition issues are distinct. Again, the only question at adjudication is whether the respondent engaged in the conduct alleged in the petition; the only question at disposition is what to do with a respondent who has been adjudicated. It's important to make sure that these issues are not improperly mixed.⁶⁹

Evidence at the Disposition Hearing

At the disposition phase of a juvenile case (*whether it's an ordinary delinquency case or a determinate sentence case where the judge is determining disposition*), in addition to evidence admitted during at the disposition hearing, the court may consider any evidence that was introduced during the adjudication phase of the case.⁷⁰ Additionally, Family Code §54.04(b)

⁶⁷Id.

⁶⁸See Footnotes 54 and 55, *supra*.

⁶⁹See, e.g., *In the Matter of C.L.*, 930 S.W.2d 935 (Tex. App. – Houston [14th Dist.] 1996, no writ), wherein it was held to be reversible error for the juvenile court judge to permit the prosecutor to argue to the jury at adjudication that it should adjudicate the respondent for her own good to remove her from an abusive home.

⁷⁰*In the Matter of A.N.M.*, 542 S.W.2d 916 (Tex.Civ.App. – Dallas 1976, no writ).

provides in part that:

At the disposition hearing, the juvenile court, notwithstanding the Texas Rules of Evidence or Chapter 37, Code of Criminal Procedure, may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses ...

This will include such matters as a social history report and other information compiled by the juvenile probation department, as well as documents from the juvenile detention center if the juvenile respondent had been detained pending the adjudication hearing.⁷¹ Despite the fact that the Texas Rules of Evidence apply in juvenile proceedings, our courts have held that the State Legislature did not intend to subject the social history report in juvenile cases to strict evidentiary standards relating to hearsay and Rules 402, 403, 404, and 405.⁷² Concluding that this Family Code procedure was constitutionally sound and not a denial of due process, one court stated: “In the disposition hearing, there is good reason to give the judge the latitude afforded by §54.04(b) to consider all factors in deciding what disposition to make. Any possible danger to the child is removed by the requirement that the court provide the attorney for the child with all written matters to be considered by the court in disposition.”⁷³ This conclusion by the court falls squarely within the sphere of the following legislative purposes in enacting the Family Code, namely, (1) “to provide for the protection of the public and public safety,” (2) “to provide treatment, training, and rehabilitation that emphasizes the accountability and responsibility of” a juvenile respondent for his/her conduct; and (3) “to “provide for the care, the protection, and the wholesome moral, mental, and physical development of children... .” Family Code §54.045 is another example of the wide latitude juvenile judges have in making disposition

decisions. That Section gives the juvenile court the ability (when appropriate procedures are followed) to hear and consider evidence related to unadjudicated extraneous offenses during the disposition hearing.⁷⁴ Also, it is not uncommon that a juvenile respondent may be a child who is also involved with the State’s Department of Family and Protective Services (DFPS). If DFPS has managing conservatorship of a juvenile respondent, then before a disposition hearing in the respondent’s delinquency case, the juvenile judge can communicate with DFPS and other parties to the suit affecting the parent-child relationship in order to obtain additional information about the respondent that may be considered in the disposition decision.⁷⁵

Be all that as it may, when it comes to the matter of reports such as those discussed above, it’s important to note that the judge is prohibited from viewing “a social history report or social service file” before an adjudication decision is made in a case.⁷⁶ But once the adjudication decision has been made, the information in a social history report or probation file may be considered by the court. In a *determinate sentence case* where the juvenile respondent has elected to have the jury decide disposition, in addition to evidence admitted during the disposition hearing, the jury may consider any evidence that was introduced during the adjudication hearing. However, it’s important to note that **in a determinate sentence case, the jury is never allowed to see a social history report at any time.**⁷⁷

What’s Required to Make a Disposition Finding: THE GUIDING QUESTION

The fact that a juvenile respondent has been found to have engaged in delinquent conduct (“Adjudicated”) does not mean that there must be a “Disposition.” In other words, although an “**Adjudication**” requires that a “**Disposition Hearing**” be held, it does not require that a “**Disposition**” take place. The Family Code

⁷¹Tex. Fam. Code, §54.04(b)

⁷²Id. See also, *In the Matter of A.A.A.* 528 S.W.2d 337 (Tex.Civ.App. – Corpus Christi 1975); *In the Matter of A.F.* 895 S.W.2d 481 (Tex.App. – Austin 1995).

⁷³*Tyler v. State*, 512 S.W.2d 46 (Tex.Civ.App. – Beaumont 1974). Also, pursuant to Family Code §54.04(b) the juvenile court is required to provide the respondent’s attorney and the State’s attorney with access to all written matter that it will consider in deciding disposition at least two (2) days before a disposition [or a disposition modification] hearing.

⁷⁴See, also, *Dawson*, Texas Juvenile Law – 9th Edition (2018).

⁷⁵Tex. Fam. Code, §54.04(y)

⁷⁶Tex. Fam. Code, §54.03(d). But note, pursuant to Family Code §54.01(c) and §54.02(e), in a detention hearing or a discretionary transfer (certification) hearing, respectively, the juvenile court judge can review written reports from probation officers, professional court employees or professional consultants before making a detention or transfer decision. In both these situations, the court is required to provide the respondent’s attorney and the State’s attorney with access to such reports.

⁷⁷Tex. Fam. Code, §54.03(d)

requires that certain specific findings be made before a juvenile court can enter a disposition order against a juvenile respondent. These findings are set forth in Family Code §54.04(c) which states that:

No disposition may be made under this section unless the child is in need of rehabilitation or the protection of the public or the child requires that disposition be made. If the court or jury does not so find, the court shall dismiss the child and enter a final judgment without any disposition. No disposition placing the child on probation outside the child's home may be made under this section unless the court or jury finds that the child, in the child's home, cannot be provided the quality of care and level of support and supervision that the child needs to meet the conditions of probation.

Consisting of just three sentences, the gravamen of this Section clearly concerns the matter of disposition in a juvenile case [i.e., what should be done with a juvenile respondent who has been adjudicated delinquent]. The resolution of the disposition issue depends initially on how the court (*or the jury in a determinate sentence case in which the respondent has elected jury disposition*) responds to the key question raised in the first sentence of §54.04(c), namely:

“is the child in need of rehabilitation or [does] the protection of the public or the child [require] that disposition be made”?⁷⁸

This is THE GUIDING QUESTION on the matter of disposition in a juvenile case. It is the answer to this question that determines whether the court or jury can make a disposition in a juvenile case.⁷⁹ In an *ordinary delinquency case*, the judge answers this question. In a *determinate sentence case* in which the respondent has elected jury disposition, this question must be submitted to the jury as a special issue. But regardless of whether it is the court or jury deciding the matter of disposition, **before a “disposition” can occur THE GUIDING QUESTION must be**

answered affirmatively (“Yes”). But what happens if the court or jury answers this question **negatively (“No”)?**

Procedure Required When THE GUIDING QUESTION is Answered Negatively (“No”)?

If the court (*or the jury in a determinate sentence case in which the respondent has elected jury disposition*) answers THE GUIDING QUESTION **negatively**, then the second sentence of §54.04(c) provides that the court CANNOT issue a disposition order in a juvenile case. Moreover, it requires that the court **shall** then dismiss the respondent and enter a final judgment in the case without any disposition.⁸⁰ Thus, with a **negative** answer to THE GUIDING QUESTION there would be an adjudication for engaging in delinquent conduct, but there would be **“no disposition”** in the case – meaning no court supervision of the respondent on probation, and no commitment to TJJD. This has been likened to a “time served” plea in the adult criminal justice system.⁸¹

What Happens When THE GUIDING QUESTION is Answered Affirmatively?

If the court (*or the jury in a determinate sentence case in which the respondent has elected jury disposition*) answers THE GUIDING QUESTION **affirmatively**, then the court CAN make a disposition judgment in the case. At that point, there are **three disposition options** available. These include: (1) placing the respondent on probation at home in the custody of his/her parents or guardian; (2) placing the respondent on probation outside his/her home; or (3) committing the respondent to TJJD, if the case involves a felony offense. The Family Code requires that if THE GUIDING QUESTION in the first sentence of §54.04(c) is answered affirmatively, the court should place the respondent on probation at home (*Disposition Option 1 above*). In effect, this is the statutory default disposition in a juvenile delinquency case. **Clearly, the third sentence in §54.04(c) requires that disposition, unless the court or the jury makes an additional finding**, which is also set out in that sentence.

⁷⁸Tex. Fam. Code, §54.04(c)

⁷⁹Id. See, also, Tex. Fam. Code, §54.04(d)

⁸⁰Tex. Fam. Code, §54.04(c)

⁸¹See, Sarah Bruchmiller and Hans Nielsen, *Determinate Sentencing for Juveniles*, Texas Prosecutor, July – August 2017, Volume 47, No 4.

Findings Required for Placement Outside Home

The additional §54.04(c) finding required to authorize the court to remove a juvenile respondent from his/her home after an adjudication for engaging in delinquent conduct is articulated as follows:

“... that the child, in the child's home, cannot be provided the quality of care and level of support and supervision that the child needs to meet the conditions of probation.”

This is what I refer to as the “*removal from home finding*.” Once again [as with *THE GUIDING QUESTION* in the first sentence of §54.04(c)], in an *ordinary delinquency case*, the judge determines this finding. However, in a *determinate sentence case*, wherein the respondent has elected jury disposition, the determination on this finding is made by the jury by answering a special issue. If the court or the jury makes this finding, then the court or jury is authorized to enter a disposition order that removes the respondent from home and that places the respondent on probation outside his/her home (*Disposition Option 2 above*). If the jury recommends probation in a *determinate sentence case*, the term of probation and the conditions of probation will be set by the court, but the probation term cannot exceed 10 years. In a nutshell, a prerequisite to the imposition of *Disposition Option 2 above*, is that the court or the jury must have **affirmatively** answered *THE GUIDING QUESTION* set out in the first sentence of Family Code, §54.04(c) **AND** must have also **made the removal from home finding** set out in the third sentence of that Section.

Correspondingly, if the court or jury answers *THE GUIDING QUESTION* **affirmatively** **AND** **makes the removal from home finding** set out in the third sentence of §54.04(c), then the court or jury could also make a disposition decision that commits the respondent to TJJD (*Disposition Option 3 above*). The court or jury would then assess whatever term of commitment it deems appropriate, so long as the term does not exceed the maximum sentence available for the level of the offense for which the respondent was

adjudicated.

Finally, if the disposition does involve either placing the respondent on probation outside his/her home, or a commitment to TJJD, the **court** must follow the directives of Family Code §54.04(i)(1). In pertinent part, this section provides that:

If the court places the child on probation outside the child's home or commits the child to the Texas Juvenile Justice Department, **the court** ... shall include in its order its determination that:

- (A) it is in the child's best interests to be placed outside the child's home;
- (B) reasonable efforts were made to prevent or eliminate the need for the the child's removal from the home and to make it possible for the child to return to the child's home; and
- (C) the child, in the child's home, cannot be provided the quality of care and level of support and supervision that the child needs to meet the conditions of probation.

The court must make these determinations in every case wherein a juvenile respondent is removed from his/her home either by a probation placement or TJJD commitment. Even in a *determinate sentence case* where the jury determines disposition, it is **the court** (not the jury) that must make these determinations; and recite them in the court's probation order or commitment order.⁸² Additionally, in an *ordinary delinquency case involving a felony adjudication*, if the petitioned offense occurred on or after September 1, 2017, before the juvenile court can commit the respondent to TJJD, the court must also make a “**special commitment finding** that the [respondent] has behavioral health or other special needs that cannot be met with the resources available in the community”.⁸³ Last but not least, as with an adjudication hearing, the evidence admitted at the disposition hearing must support

⁸²Tex. Fam. Code, §54.04(i)(1)

⁸³Tex. Fam. Code, §54.04(d)(2) and §54.04013

all the above findings.

The Disposition Order: Statement of Reasons and Conditions of Probation

Once the juvenile court has made and announced its disposition decision (or, when appropriate, announced the disposition decision of the jury), the court is required to do the following:

(1) state the specific reasons for the disposition [*or disposition modification*] it ordered in its disposition [*or disposition modification*] order (or, the specific reasons for modifying a disposition order;⁸⁴

(2) if the respondent is placed on probation the court is required to write the terms of probation in the order; and furnish the respondent with a copy of the order;⁸⁵

(3) inform the respondent about his/her right to **appeal**, as required by Family Code §56.01;⁸⁶ and

(3) [*in an ordinary delinquency case*] inform the respondent about the procedure for the **sealing** of the juvenile records under Family Code, Chapter 58, Subchapter C-1.⁸⁷

Transferring Disposition to a Different County

Family Code §51.07 authorizes a juvenile court to transfer a case to the county of residence of the child for disposition. The idea of this procedure is that the most convenient county for adjudication is likely to be the county in which the offense occurred, while the best county for disposition is likely to be the county of the child's residence. If those counties are different, then §51.07 permits the juvenile court, after adjudication, to transfer the case to the county of residence for disposition. Such a transfer may occur without the consent of the county in which the child resides.⁸⁸

⁸⁴Tex. Fam. Code, §54.04(f)

⁸⁵Id.

⁸⁶Tex. Fam. Code, §54.04(h)(1)

⁸⁷Tex. Fam. Code, §54.04(h)(2) and §54.04(i).

⁸⁸Tex. Fam. Code, §51.07; Texas Attorney General Opinion No. LO 95-030 (1995).

Termination of Disposition

It is an ironclad rule that except for a TJJD commitment, all dispositions in *ordinary juvenile delinquency cases* (both misdemeanors and felonies) automatically terminate when a juvenile respondent reaches his/her 18th birthday. However, in a *determinate sentence case*, a probation may extend to the respondent's 19th birthday. Also, (as discussed below), at age 19 the juvenile court, on motion of the State and after a hearing, can transfer a determinate probation to an appropriate (adult) district court for continued community supervision as an adult.⁸⁹ See the discussion about this below.

Section III

MODIFICATION OF DISPOSITION

This section examines the law and procedures relating to modifying a disposition in a juvenile case. Juvenile court judges have significant power to modify a disposition order. The statutory basis for this power is Family Code §54.05. In pertinent part, Subsection (a) of this section states that:

“(a) ... any disposition, except a commitment to the Texas Juvenile Justice Department, ***may be modified by the juvenile court*** as provided in this section until:

(1) the child reaches:

(A) the child's 18th birthday; or

(B) the child's 19th birthday, if the child was placed on a determinate sentence probation ...; or

(2) the child is earlier discharged by the court or operation of law.
(*Emphasis Added*)

Thus, in the context of a disposition modification, three things are clear. First, (*except a TJJD commitment order*), a juvenile court has the power to modify its disposition orders. Secondly, a juvenile respondent does

⁸⁹See, Tex. Fam. Code, §54.04(q) and §54.051

not have a right to a jury in a hearing to modify disposition.⁹⁰ Thirdly, a juvenile court's jurisdiction to modify a disposition order (*again, except a TJJD commitment order*) lasts up until a juvenile respondent reaches the requisite ages set out above or up until the court discharges the respondent before he/she reaches said age. If the court does not discharge a respondent from probation before he/she reaches age 18 or 19, the respondent is discharged by operation of law upon reaching said age. So, what does it take to initiate a disposition modification? And, what are the requirements regarding giving notice to the juvenile respondent when a disposition modification is sought by a party [again, usually the State] to a juvenile case? Those questions are answered by Family Code §54.05(d) which states 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. Reasonable notice of a hearing to modify disposition shall be given to all parties.

Obviously, under this Section **any party** in a juvenile case may petition the court to modify a disposition order. As noted above, the **"parties"** to a juvenile proceeding are the state, the juvenile respondent, and the respondent's parent, spouse, guardian, or guardian ad litem. However, §54.05(d) also provides that two non-parties (the court and a probation officer) may also file a petition to modify a disposition order. This writer has never been involved in a case in which a respondent's "parent, spouse, guardian, or guardian ad litem" has filed a petition to modify a disposition of a juvenile court in a delinquency case. Again, it is usually the State seeking disposition modifications – and that is usually because of an allegation of a violation of a condition of probation by the respondent.

Section 54.05(d) also makes it clear that a **"hearing"** is required in order to modify any condition of a juvenile court disposition order. Again, the Family Code and court decisions

envison a plenary evidentiary hearing on the record and on the merits of the allegations of a petition or motion to modify a juvenile court disposition order.⁹¹

Petition and Notice Requirements

It is axiomatic that a petition or motion to modify disposition should incorporate specific details concerning the nature of the allegations plead. Such details are required in order to give the respondent adequate notice of the alleged probation violations and what he/she needs to be prepared to defend. However, in contrast to the very specific requirements the Family Code mandates regarding what information should be contained in an adjudication petition and how notice of such a petition is given to a juvenile respondent,⁹² it is remarkably vague regarding these matters in the context of a petition or motion to modify a disposition. In short, there is a perceptible lack of specificity in the Family Code regarding what information should be stated in a modification petition/motion. In view of this lack of specificity, Dawson recommends that juvenile courts follow the Family Code's pleading and notice guidelines regarding adjudication petitions, meaning that: "In general, a petition to modify disposition should contain the following information: (1) identify the child and give his/her name, age, and residence address; (2) identify the names and residence addresses of the child's parent, guardian, or guardian ad litem of the child and the child's spouse, if any; (3) allege the fact that the child was adjudicated delinquent and was placed on probation, including the dates of adjudication and disposition and the court that conducted the adjudication and disposition proceedings; (4) those conditions of probation the child is believed to have violated should be set out verbatim from the probation order; (5) with reasonable particularity, the time, place and manner of the child's acts believed to have violated those conditions must be set out; and (6) state a prayer for relief, such as a request that the juvenile court revoke the child's probation and commit him or her to the custody of the Texas Juvenile Justice Department

⁹¹See, Footnote 16, *supra*.

⁹²See, Tex. Fam. Code, §53.04(b) regarding what information should be contained in a petition for adjudication. See also, Tex. Fam. Code, §53.06(e) regarding the requirement of personal service on a juvenile respondent.

⁹⁰See also, *In the Matter of A.M.B.*, 676 S.W.2d 448 (Tex.App. – Houston [1st Dist.] 1984, no writ).

(TJJD).”⁹³ The Family Code does not specify the circumstances under which a petition or for modification may be amended. However, the general principle is that the petition can be amended if that can be done without substantial prejudice to the respondent.⁹⁴ Considering the landmark U.S. Supreme Court decisions regarding “due process” in the area of juvenile justice,⁹⁵ this is very sound advice.

The Family Code’s marked vagueness regarding what information must be contained in a petition or motion to modify a disposition is also evident as to the service and notice requirements relating to such a pleading. Although §54.05(d) requires the filing of a petition in order to modify a disposition, it does not specify any process for giving notice of a modification hearing. All it says is that “reasonable notice of a hearing to modify disposition shall be given to all parties.” Texas Court decisions have not provided much clarity on the subject of “*reasonable notice*.” In fact, our courts have rendered conflicting decisions on what constitutes “*reasonable notice*” under §54.05(d). Various courts have held that ten (10) days;⁹⁶ eight (8) days;⁹⁷ and seven (7) days⁹⁸ notice constitute “*reasonable notice*” for a modification hearing. Comparing these holdings with the requirement in Family Code §51.10(h) that a juvenile respondent’s attorney is entitled to 10 days to prepare for an adjudication or transfer hearing, it is arguable that not allowing at least that much preparation time for a modification hearing would raise some of the “due process” issues expressed in *In Re Gault*.⁹⁹ Hence, *Dawson* also recommends that *the safest course of action* for juvenile courts is to grant the respondent’s defense counsel 10 days from the time a respondent is served with a modification petition/motion to prepare for a probation revocation or modification hearing.¹⁰⁰

Finally, at the modification hearing the juvenile court judge is not required to again give the respondent the §54.03(b) admonishments that were given in the adjudication hearing. Since

those admonishments generally carry over to a disposition hearing they also carry over to a hearing to modify disposition.¹⁰¹

Waiver of Hearing and Plea Bargaining in Modification Hearings

The question of whether a juvenile respondent can waive a modification hearing depends on the nature of the relief being sought by the State. For example, if the case involves a felony adjudication and the State is seeking a revocation of probation and a TJJD commitment, then the Family Code requires that “**a hearing shall be held.**”¹⁰² Likewise, regardless of whether the case involves a felony or a misdemeanor adjudication, if the desired probation modification is a placement in a post-adjudication secure correctional facility [*i.e., a boot-camp placement as a modified or new condition of probation*] for a period of longer than 30 days, then a hearing is also required. In either of those situations, the juvenile respondent cannot waive the modification hearing. But, if the State is pursuing any other type of disposition modification [*i.e., a modified or new condition of probation ordering the respondent to attend an out-patient drug treatment program*], then upon complying with Family Code §51.09 the respondent and his/her parent, guardian, guardian ad litem, or attorney may waive the modification hearing.¹⁰³ Generally, when this occurs it is because of an agreement between the respondent and the State resolving the matters sought by the State in its modification petition.

Plea-bargaining is of the same hue in modification hearings as it is in adjudication hearings. Accordingly, the State and the respondent can enter into a plea agreement in a probation revocation or modification hearing. As with plea agreements in the an adjudication hearing, in the context of a modification of disposition such agreements accomplish three basic things: (1) they avoid the necessity of a plenary modification hearings; (2) they satisfy the §54.05(d) requirement that a hearing be held on a petition or motion to modify disposition; and (3) they provide the court with prima facie evidence on which it can base a revocation or modification of a previous probation disposition

⁹³*Dawson*, Texas Juvenile Law (Chapter 13) – 9th Edition (2018)

⁹⁴*Id.*

⁹⁵See, e.g., *In Re Gault*, 387 U.S. 1 (1967); *In re Winship*, 397 U.S. 358 (1970)

⁹⁶*In the Matter of M.L.S.*, 590 S.W.2d 626 (Tex.Civ.App.- San Antonio 1979, no writ).

⁹⁷*In the Matter of J.C.*, 556 S.W.2d 119 (Tex.Civ.App.- Waco 1977, no writ).

⁹⁸*In the Matter of B.W.*, UNPUBLISHED, No. 07-98-0203-CV, (Tex.App. – Amarillo 1999, no pet.).

⁹⁹See, Footnote 12, *supra*.

¹⁰⁰*Dawson*, Texas Juvenile Law (Chapter 13) – 9th Edition (2018)

¹⁰¹*In the Matter of S.J.*, 940 S.W.2d 332,334 (Tex.App. – San Antonio 1997, reh’g denied)

¹⁰²Tex. Fam. Code, §54.05(h)

¹⁰³*Id.*

order.¹⁰⁴ Again, it's important to note that Family Code §54.05(i) requires that when a modification occurs, the juvenile court must specifically state its reasons for modifying the disposition in the modification order. The court is also required to provide the respondent with a copy of the modification order.

Evidence and The Standard of Proof in Modification Hearings

As in an original disposition hearing, in a probation revocation or modification hearing “the court may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of other witnesses” in determining whether to grant the moving party’s [usually the State] request for a disposition modification, and what, if any, modification would be appropriate.¹⁰⁵ The burden of proof in such a hearing is on the State to prove any alleged probation violation(s) by **a preponderance of the evidence**. And, in order to support a revocation of probation, or a disposition modification, the State’s proof must show that the juvenile respondent violated a reasonable and lawful order of the juvenile court.¹⁰⁶

Extending a Probation Term in an Ordinary Delinquency Case

Occasionally, cases arise where the term of probation will expire before the juvenile respondent’s 18th birthday. In those situations, Family Code §54.05(l) authorizes a juvenile court to extend a period of probation. Specifically, that Section states:

“The court may extend a period of probation under this section at any time during the period of probation or, if a motion for revocation or modification of probation is filed before the period of supervision ends, before the first anniversary of the date on which the period of probation expires.”

Generally, the party filing a petition/motion

¹⁰⁴*In the Matter of J.L.*, 664 S.W.2d 119 (Tex.App. – Corpus Christi 1983, no writ); See, also, Dawson, Texas Juvenile Law (Chapter 13) – 9th Edition (2018)

¹⁰⁵Tex. Fam. Code, §54.05(e)

¹⁰⁶Tex. Fam. Code, §54.05(f)

to revoke or modify probation would be the State. The primary constraint on the State’s ability to seek either action is that the petition/motion for modification seeking an extension of the probation term must be filed before the probation period ends. If the State waits until probation has expired, then the juvenile court has lost jurisdiction to revoke or modify probation. If the State’s motion to revoke/modify probation was filed timely (before the period of probation ends), then the court can take action on it at any time “before the first anniversary of the date on which the period of [the respondent’s] probation ends.”¹⁰⁷ In effect, the Family Code extends the jurisdiction of the court to make a modification up to one year from the date the probation was due to end. But, it’s important to remember that under no circumstance can the probation extend past the respondent’s 18th birthday.

So, under what circumstances would the State be seeking a disposition modification that extends the period of a juvenile respondent’s probation term? Hypothetically, such a request might happen in a case where a juvenile respondent has been a bit lackadaisical about performing probation, but his/her violations are not serious enough to warrant an actual revocation. Instead, the extension is sought in order to keep the respondent under supervision for as long as possible as a rehabilitative measure.

Transfer, Revocation, and Extension of Probation in a Determinate Sentence Case

If, at the original disposition hearing in a *determinate sentence case* the judge or jury sentenced a juvenile respondent to a TJJD commitment of 10 years or less, then that sentence could be probated for up to up to 10 years. There are three frequently encountered issues when a respondent receives probation in a *determinate sentence case*. First, what can be done (and what procedure must be followed) when the probation term extends past the respondent’s 19th birthday? Secondly, what procedure must be followed in order to revoke probation if the respondent violates a condition

¹⁰⁷Tex. Fam. Code, §54.05(l)

of probation? Thirdly, can the juvenile court extend the term of a determinate sentence probation?

Regarding the first question, if the respondent is still on a determinate sentence probation at age 19 for a probation term that extends past his/her 19th birthday, on motion of the State the juvenile court shall hold a hearing to determine whether to discharge the respondent from probation or transfer him/her to an appropriate district court (a district court having jurisdiction over adult offenders). The State's motion must be filed, and the hearing must take place, before the respondent's 19th birthday. [Note, if the offense for which the respondent was placed on probation occurred before September 1, 2011, the State's motion must be filed, and the hearing must take place, before the respondent's 18th birthday]. This type of hearing is conducted in the same manner as a modification hearing. At the conclusion of the hearing, the juvenile court judge must either discharge the respondent from probation or transfer the respondent to an appropriate district court on his/her 19th [or 18th] birthday. If the respondent is discharged from probation, his/her case is over. By the way, it is also important to point out that the court could discharge a juvenile respondent from a determinate sentence probation at any time before his/her 19th birthday.¹⁰⁸ If the court decides to transfer the respondent to a district court having jurisdiction over adult offenders, then the respondent will be placed on community supervision as an adult and supervised by adult probation authorities for the remainder of his/her probationary term under conditions that are consistent with those that were ordered by the juvenile court.¹⁰⁹

As for the second question above, if the respondent violates probation the juvenile court may revoke his/her probation. This would require a motion to revoke probation by the State which must be filed before the respondent's probation term expires – meaning before the respondent's 19th [or 18th] birthday. If the State waits until probation has expired, then the juvenile court has lost jurisdiction to revoke or modify probation.

¹⁰⁸Tex. Fam. Code, §54.04(q)

¹⁰⁹Id. See also, Tex. Fam. Code, §54.051. Also, for an in-depth discussion of transfer of determinate sentence probation to district court, see Dawson, Texas Juvenile Law (Chapter 21) – 9th Edition (2018).

After the State's motion to revoke probation is filed, the court will conduct a probation revocation/modification hearing. If the State offers competent evidence at the hearing which proves the alleged probation violation (and that the respondent's violating act or omission related a reasonable and lawful order of the court), then the court can revoke probation and commit the respondent to TJJD for a term that does not exceed the original sentence assessed by the court or jury. The court can also commit the respondent to TJJD for a shorter sentence than originally assessed but not for a longer one. In either case, [assessment of the original sentence or a shorter sentence] the court is, in effect, "modifying" the original disposition in the case.¹¹⁰

Finally, as to the third question above, pursuant to Family Code §54.04(q), the juvenile court may extend the determinate sentence probation. The only restriction is that the sentence of probation and any extension may not exceed 10 years. If a probated determinate sentence (including any extension of probation) would continue past a respondent's 19th birthday, then the court will have to consider one of the options discussed above, discharge, transfer, or revocation with a commitment to TJJD. Again, with respect to this final option (revocation and commitment to TJJD), the only restriction is that the commitment cannot exceed the number of years originally assessed by the court or jury.¹¹¹

Other Dispositional Powers of the Juvenile Court

Family Code §54.04 provides our juvenile courts with many dispositional powers, especially in the realm of imposing conditions of probation, including the power to:

- (1) order juvenile respondents adjudicated for possession, carrying, using, or exhibiting of a handgun, to provide the probation department with information about when, how, and from whom he/she acquired the handgun;¹¹²

¹¹⁰ Tex. Fam. Code §54.05(j).

¹¹¹Id.

¹¹²Tex. Fam. Code, §54.0406

- (2) order the DPS to suspend a child's driver's license or permit, or if the child does not have a license or permit, to deny the issuance of a license or permit to the child if the court finds that the child has engaged in conduct that:
- (A) violates a law of this state enumerated in §521.342(a) of the Transportation Code ... commits the offense of graffiti¹¹³
- (3) order a juvenile respondent placed on probation (and his/her parent) to perform up to 500 hours of community service as a condition of probation;¹¹⁴
- (4) order a juvenile respondent placed on probation for a drug or alcohol offense to attend a drug education program or an alcohol awareness program;¹¹⁵ and
- (5) order a juvenile respondent placed on probation (and his/her parent) to pay restitution to the victim of the respondent's crime.¹¹⁶

If used wisely, these dispositional tools could have a powerful and positive impact on the disposition of juvenile delinquency cases and the rehabilitation of juvenile offenders.

CONCLUSION

There is much more to be said about Adjudication, Disposition, and Modification Hearings than what has been covered here. This paper was never intended to try and cover every possible issue on these subjects. To obtain a more in-depth understanding of these areas of juvenile

law, I encourage the reader to do the following: (1) study Sections 54.03, 54.04, and 54.05 of the Family Code, (2) read Dawson, Texas Juvenile Law, 9th Edition (2018) (Chapters 11, 12, and 13); and (3) study the cases cited in these chapters. My hope is that the paper has provided some helpful and useful information for those of you attending this year's Juvenile Law Conference Nuts & Bolts session, especially those who are new to the juvenile law arena. Good luck!
Terrance Windham

¹¹³Tex. Fam. Code, §54.042

¹¹⁴Tex. Fam. Code, §54.044

¹¹⁵Tex. Fam. Code, §54.047

¹¹⁶Tex. Fam. Code, §54.048 and §54.0482

ATTACHMENT 1

IMMIGRATION WARNINGS FOR JUVENILES

IF YOU ARE NOT A CITIZEN OF THE UNITED STATES, THE FOLLOWING CONSEQUENCES CAN OCCUR IF YOU ARE FOUND TO HAVE ENGAGED IN DELINQUENT CONDUCT FOR ANY OFFENSE (FOUND GUILTY):

1. **YOU MAY BE DEPORTED OR REMOVED FROM THE UNITED STATES;**
2. **IF YOU ARE A LEGAL PERMANENT RESIDENT (GREEN CARD), UPON ADJUDICATION FOR HAVING ENGAGED IN DELINQUENT CONDUCT (FOUND GUILTY), YOUR RIGHT TO REMAIN IN THE UNITED STATES MAY BE DENIED AND YOUR STATUS AS A LEGAL PERMANENT RESIDENT MAY BE REVOKED;**
3. **IF YOU ARE A LEGAL PERMANENT RESIDENT (GREEN CARD), UPON ADJUDICATION FOR HAVING ENGAGED IN DELINQUENT CONDUCT (FOUND GUILTY), IF you LEAVE THE UNITED STATES, YOU MAY BE DENIED ACCESS OR REENTRY BACK INTO THE UNITED STATES, YOUR PERMANENT RESIDENCE CARD (GREEN CARD) MAY BE CONFISCATED BY IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE), AND DEPORTATION OR REMOVAL PROCEEDINGS MAY BE INITIATED BY IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE);**
4. **IF YOU ARE ADJUDICATED FOR HAVING ENGAGED IN DELINQUENT CONDUCT (FOUND GUILTY) FOR A CONTROLLED SUBSTANCE OFFENSE (DRUGS) PURSUANT TO SECTION 8, UNITED STATES CODE ANNOTATED, SECTION 1182(a)(2)(i)(II) STATING THAT AN ALIEN CONVICTED OF VIOLATION ANY STATE LAW RELATING TO CONTROLLED SUBSTANCES IS INADMISSABLE FOR ENTRY INTO THE UNITED STATES), YOU WILL BE DENIED ENTRANCE TO THE UNITED STATES;**
5. **IF YOU ARE ADJUDICATED FOR HAVING ENGAGED IN DELINQUENT CONDUCT (FOUND GUILTY) AND YOU ARE NOT A CITIZEN OF THE UNITED STATES, DEPORTATION PROCEEDINGS CAN BE INITIATED BY IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE);**
6. **IF YOU ARE ON PROBATION AND YOU ARE CHARGED WITH VIOLATING A TERM OR CONDITION OF YOUR PROBATION, UPON THE COURT FINDING THAT YOU VIOLATED A TERM OR CONDITION OF YOUR PROBATION, YOU MAY BE DEPORTED OR REMOVED FROM THE UNITED STATES, DENIED REENTRY TO THE UNITED STATES, DENIED ADJUSTMENT OF IMMIGRATION STATUS, OR YOUR LEGAL PERMANENT RESIDENT CARD (GREEN CARD) MAY BE CONFISCATED;**
7. **IF YOU ARE PLACED IN DEFERRED PROSECUTION AND YOUR CASE REMAINS PENDING DURING THE TERM OF THE DEFERRED PROSECUTION AND YOU LEAVE THE UNITED STATES, THE FACT THAT YOUR CASE IS STILL PENDING DURING THE DEFERRED PROSECUTION TERM MAY RESULT IN YOU BEING DENIED REENTRY TO THE UNITED STATES, OR IT MAY RESULT IN YOUR DEPORTATION OR REMOVAL FROM THE UNITED STATES FOLLOWING YOUR REENTRY.**

ACKNOWLEDGMENT OF RECEIPT OF ADMONISHMENTS

DATED: _____

JUVENILE RESPONDENT

PARENT

ATTORNEY FOR RESPONDENT

INTERPRETER

APPROVED BY THE COURT:

DATED: _____

JUDGE PRESIDING