

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

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Juvenile Law

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

Protection of the Public

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

Grounds for a Juvenile to be Taken into Custody (§52.01)

- Juvenile **Court Order**
- Laws of **Arrest**
- Pursuant to a **Directive to Apprehend**
- By **Law Enforcement** if there is **Probable Cause (PC)** to believe that the Child **has committed a crime or violated a condition of probation.**
- By **Juv. Probation Officer** if there is **PC** to believe that the Child has **violated a condition of probation or a condition of release**
- **Law Enforcement** if Child is in violation of compulsory **attendance law** and **return to Child's school campus** to ensure compliance with law.

Juvenile Detention § 54.01

- A **child between the ages of 10 and 17** who is alleged to have committed a crime, may be taken into custody and detained in accordance with the Code of Criminal Procedure and the Family Code.
- Children are not entitled to bail. Children are entitled to a hearing not later than the **2nd working day after being detained;** unless detained on a **Friday or Saturday = hearing must be held 1st working day after being detained.**

Detention Hearing

- Texas Family Code § 54.01(o) requires a **judicial determination** that there is **probable cause** to believe that the child engaged in **delinquent conduct, CINS offense, or engaged in conduct that violated a juvenile Court order of probation. PC must be found within 48 hours,** including weekends and holidays, of the time the child was taken into custody for continued detention.

Detention of Juveniles

- Texas law mandates a presumption in favor of release. Tex. Fam. Code Section 53.02



Detention Hearing Criteria

§ 54.01(e)

If the child were released they

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

Detention Timelines § 54.01 (h)

- The initial detention hearing **CANNOT** be waived.
- Each Subsequent Detention Order extends for **not more than 10 working days, or end of Dispo hearing** whichever occurs first.
- **EXCEPTION:** in a county without a certified juvenile detention facility = not more than 15 working days.

Detention Timelines § 54.01(q)

- A Juvenile must be released if a petition (§53.04) or a MTM (§54.05) has not been filed no later than:
 - 30th working day after initial detention hearing if charged with Capital Felony, Agg. Controlled Substance Felony, or 1st Degree Felony.
 - 15th working day after initial detention hearing if charged with offense other than above 3 categories or for a violation of probation.

Juvenile Statements

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

Juvenile Statements Cont'd

- Oral Statements
 - If not in Custody and voluntarily given = admissible.
 - Statements taken at School
 - Look to see if the Child was in a "special custody" different from the normal school setting in which all students are always in a form of custody.
 - Typically school statements are not custodial.

Juvenile Searches

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

Juvenile Searches at Schools

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

Juvenile Sanction Guidelines

- Punishment decisions in juvenile cases may be based upon the model for progressive sanctions in Chapter 59 if adopted by the Juvenile Board for that jurisdiction. (§ 53.013)
- Sanction Guideline Level 1: Supervisory caution.
- Sanction Guideline Level 2: 3-6 months Def'd Pros.
- Sanction Guideline Level 3: not less than 6 months standard probation
- Sanction Guideline Level 4: 3-12 months intensive supervision probation, followed by standard probation
- Sanction Level 5: 6-12 months placement outside the child's home in secure correctional facility, followed by intensive or standard probation
- Sanction Level 6: Indeterminate commitment to the Texas Juvenile Justice Department
- Sanction Level 7: Determinate Sentence or Transfer of Jurisdiction (Certification) to adult criminal court

Deferred Prosecution SGL2

§ 53.03

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

Who can give Deferred Prosecution?

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

See: TFC §53.03, §59.003 & §59.005

When & How Long Dpro Can Be

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

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

Juvenile Records

Chap. 58 TFC

➤ Criminal Records of Juveniles:

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

Who Cannot Seal Their Records?

§ 58.256(d)

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

Automatic Sealing Criteria:

§58.253

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

Sealing by Application Criteria: (§ 58.256)

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

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

Other Juvenile Issues

- **Registration as Sex Offender** under Chapter 62 of Code Criminal Procedure is discretionary with the judge in juvenile cases.
- Juveniles adjudicated of certain Felony offenses are required to submit a **DNA sample**.
- Education Code provides for removal of a child from his school and placement in an **alternative education placement** for certain offenses even if committed "off-campus".

Judicial Findings

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

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