

DISPOSITIONS & MOTIONS TO MODIFY IN JUVENILE CASES

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IN THIS PRESENTATION

“ORDINARY DELINQUENCY CASE” REFERS TO INDETERMINATE PETITIONED CASES

- This includes all jailable misdemeanor offenses
- Also includes felony offenses (*except determinate sentence cases*)

“DETERMINATE SENTENCE CASE” REFERS TO CASES IN WHICH THE PETITION HAS BEEN APPROVED BY A GRAND JURY UNDER FAMILY CODE, §53.045

- This includes all felonies listed in FC, §53.045 OR Habitual Felony Conduct as described in FC, §51.031

THE GENERAL RULE

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

*RULE APPLIES REGARDLESS OF WHETHER THE CASE IS AN **“ORDINARY DELINQUENCY CASE”** OR A **“DETERMINATE SENTENCE CASE”***

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.**
 - **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**

Texas Family Code §54.04

ORDINARY DELINQUENCY CASES

- **WHAT CAN HAPPEN IN A “DISPOSITION HEARING”?**
 - **Probation**
 - May be for any period up until age 18
 - May be extended up to age 18
 - Possible out of home placement as a condition of probation
 - Minimum 2-year term for sexual offenses
 - **Possible TJJD commitment, if felony offense**
 - **HOWEVER, THERE CAN BE NO TJJD COMMITMENT FOR MISDEMEANOR OFFENSES**
 - **Possibility of No Disposition**
 - The court or a jury could find that the Respondent engaged in delinquent conduct, there is no need for a disposition.
 - The Court would then dismiss the respondent and enter a judgment without any disposition

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 in a Disposition Hearing as in Adjudication Hearing
- **Referees and Associate Judges**
 - May hear case if no objection from any party
- **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 THE DISPOSITION HEARING**

DETERMINATE SENTENCE CASES

- **What Can Happen in a “Disposition Hearing”?**
 - **Probation**
 - Probation term can be up to 10 years
 - May be extended, but not past a term of 10 years
 - Possible in-home placement
 - Possible out of home placement as COP
 - Minimum 2-year term for sexual offense
 - **Possible TJJD sentence of up to 10, 20, or 40 years**
 - **Possible judgment of “No Disposition”**

DETERMINATE SENTENCE CASES

- **Who Hears Disposition: Judge or Jury**
 - Respondent has right to jury in a disposition hearing.
 - Respondent must make election for jury disposition before voir dire begins.
 - If no election made before voir dire, then judge decides disposition.

Texas Family Code, § 54.04(a)

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.**
 - Must send written findings and recommendations DS pleas and stipulations to juvenile court judge for approval or rejection.

TFC, §54.10(e),(f)

DETERMINATE SENTENCE CASES

- **Evidence the court may consider**
 - Social History Reports
 - Detention Reports
 - Live testimony (fact witnesses, professional court employees)
 - Evidence admitted during Adjudication Hearing
 - Victim testimony
 - **NOTE: If jury is deciding disposition, it can NEVER see the above-mentioned reports!**

THE DISPOSITION HEARING

Texas Family Code §54.04

DISPOSITION IS NOT AUTOMATIC!

No disposition may be made ... unless the child [*juvenile respondent*] 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.

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

Jury May Answer

THE DISPOSITION HEARING

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)

THE DISPOSITION HEARING

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.
- The 3 Disposition Options:
 - **Disposition Option 1: Place the respondent on probation at home in custody of his/her parents.**
 - **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.**

DISPOSITION OPTION 1

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

- **ESSENTIALLY, THIS IS THE “STATUTORY DEFAULT DISPOSITION.”**
 - Required by the 3rd sentence of Texas Family Code, §54.04(c)
UNLESS
 - The court or jury also makes the finding 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.”

THIS IS POPULARLY KNOWN AS: “THE REMOVAL FROM HOME FINDING”

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 FINDING**”, 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 that election not made prior to beginning of voir dire, then the judge decides.*

DISPOSITION OPTION 3

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

- IF THE COURT OR JURY MAKES **“THE REMOVAL FROM HOME FINDING”**, 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 disposition.***

Texas Family Code, § 54.04(a)

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)

“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.

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

STATEMENT OF REASONS & ADDITIONAL RIGHTS

- The juvenile court must make a Statement of Reasons for its disposition decision in the disposition order.
 - Applies in both “Ordinary Delinquency Cases” and “Determinate Sentence Cases”
- At the conclusion of the Disposition Hearing, the court must inform the Respondent of his/her
 - right to appeal; and
 - *[in an “Ordinary Delinquency Case”]* the procedures for sealing juvenile records

Texas Family Code §54.04(f) and (g)

TRANSFERRING DISPOSITION TO DIFFERENT COUNTY

- **The juvenile court can transfer a case to the juvenile court of the county of residence of the juvenile respondent for disposition.**
 - **Consent by the juvenile court where the respondent lives is not required.**

MODIFICATION HEARINGS

Texas Family Code, §54.05

MODIFICATION HEARINGS

- **A PETITION/MOTION TO MODIFY DISPOSITION IS REQUIRED**
 - **Petition/motion may be filed by any “party” (or by the Court or a Juvenile Probation Officer).**
 - **Generally, a petition/motion to modify disposition is filed by the State.**

Texas Family Code, §54.05

MODIFICATION HEARINGS

Texas Family Code, §54.05

- **PETITION AND NOTICE REQUIREMENTS**
 - Family Code is vague regarding contents of Petition/Motion 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 PETITION/MOTION 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.

MODIFICATION HEARINGS

Texas Family Code, §54.05

- **WAIVER OF HEARING AND PLEA BARGAINING**

- Generally, a respondent can waive a modification hearing and reach an agreed settlement of the case with the State.
- **EXCEPTIONS: Respondent cannot waive modification hearing when the State is seeking:**
 - A 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 previously noted regarding *determinate sentence cases* apply.

MODIFICATION HEARINGS IN “ORDINARY DELINQUENCY CASES”

ORDINARY DELINQUENCY CASES

CARDINAL RULE:

A TJJD COMMITMENT IN AN “ORDINARY DELINQUENCY CASE” *[AN INDETERMINATE COMMITMENT]*
CANNOT BE MODIFIED.

Texas Family Code, §54.05

ORDINARY DELINQUENCY CASES

- **WITH THE EXCEPTION OF A TJJD COMMITMENT, THE JUVENILE COURT MAY MODIFY A DISPOSITION ORDER UNTIL:**

- Respondent's 18th birthday

OR UNTIL

- Respondent is “discharged” from probation prior to his/her 18th

TFC, §54.05(a)

REMEMBER: If no modification (or revocation) of probation occurs, in an “ordinary delinquency case”, the Respondent is automatically discharged from probation on his/her 18th birthday by operation of law.

TFC, §54.05(b)

EXTENDING PROBATION TERM IN ORDINARY DELINQUENCY CASES

- The juvenile court may extend a period of probation at any time during the period of probation.
- No extension of period of probation can go past the respondent's 18th birthday.
- **The petition/motion to revoke or modify probation must be filed before the period of probation end.**
 - 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.
 - If petition/motion to revoke or modify probation is not timely filed, then the juvenile court has lost jurisdiction over the case.
- **REMEMBER THIS: 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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 - If the petition/motion to revoke or modify probation is not timely filed, then the juvenile court has lost jurisdiction over the case.
 - If the State filed petition to revoke or modify probation before probation expired, then the juvenile court has up until one-year past probation ending date to extend period of probation.
- **REMEMBER THIS: Even though the State may be seeking a revocation the court can extend the period of probation instead of revoking probation.**

**MODIFICATION HEARINGS IN
“DETERMINATE SENTENCE
PROBATION CASES”**

DETERMINATE SENTENCE CASES

CARDINAL RULE:

A TJJD COMMITMENT IN A DETERMINATE SENTENCE CASE CANNOT BE MODIFIED.

Texas Family Code, §54.05

Determinate Sentence Probation

The 3 Most Frequently Encountered Issues

Issue No. 1

WHAT PROCEDURES MUST BE FOLLOWED TO REVOKE A DETERMINATE SENTENCE 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 is 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 proven, court can commit respondent to TJJ for a term not to exceed the original sentence.**
 - **The court may assess a lesser term of confinement.**

Texas Family Code, §54.05(j)

ISSUE NO. 2

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 (including any extension) may not exceed 10 years.
 - If the term of probation (including any extension) would continue past the respondent's 19th birthday, then the court would have to do one of the following:
 - **Discharge** the respondent from probation; OR
 - **Transfer** the respondent to an adult district court.
- **NOTE: The juvenile court may "discharge" a respondent from a determinate sentence probation at any time before his/her 19th birthday.**

Texas Family Code, §54.04(q) & §54.05

ISSUE NO. 3

IF THE TERM OF A DETERMINATE SENTENCE PROBATION EXTENDS PAST THE RESPONDENT'S 19TH BIRTHDAY, WHAT ARE THE PROCEDURES & REQUIREMENTS FOR TRANSFER OF HIS/HER PROBATION TO AN ADULT DISTRICT COURT AT AGE 19?

- **A MOTION TO TRANSFER MUST BE FILED BY THE STATE**
 - The juvenile court shall hold a hearing on the State's Motion to determine one of following:
 - Whether to **"transfer"** the respondent to an adult district court ; **OR**
 - Whether to **"discharge"** the respondent from probation
- **This hearing must be held before the respondent's 19th birthday!**
 - If **"discharged"** from probation, respondent's case is over.
 - If **"transferred,"** respondent continues on probation under adult community supervision for remainder of the probation term
- **NOTE: The court may transfer the respondent to an appropriate district court without a showing that he/she violated a condition of probation.**

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**

**THE
END**