

# PARENTS JUVENILE OVERVIEW

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## PART I – JURISDICTION

### A. The Juvenile Court

The Juvenile Court has exclusive original jurisdiction over all cases involving the delinquent conduct (criminal acts) engaged in by a person who was a child within the meaning of Title 3 of the Family Code.<sup>1</sup>

### B. The Referee

The juvenile board, or if there is not a juvenile board, the juvenile court, may appoint a referee to conduct hearings under this Title 3 of the Family Code.<sup>2</sup> With some exceptions, the Referee may conduct detention hearings, adjudication hearings (including jury trial), disposition hearing, hearings to modify dispositions, proceedings concerning children with mental illness or intellectual disability, and hearings under the Uniform Interstate Compact on Juveniles<sup>3</sup> provided:

- (1) the parties have been informed by the referee that they are entitled to have the hearing before the juvenile court judge;<sup>4</sup> or
- (2) after each party is given an opportunity to object, no party objects to holding the hearing before the referee or associate judges.<sup>5</sup>

## PART II - THE CHILD'S RIGHTS

### A. Rights Generally

Section 54.03(e) referring specifically to adjudication hearings states, "Evidence illegally seized or obtained is inadmissible in an adjudication hearing."<sup>6</sup> It should also be noted that the Family Code also makes reference to a juvenile's constitutional rights in providing that its purpose is "...to provide a simple judicial procedure... in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced".<sup>7</sup>(emphasis added). It has already been settled that a minor has the same constitutional right to be secure in his person from unreasonable seizures as an adult,<sup>8</sup> and the Fourteenth Amendment and the Bill of Rights protect minors as well as adults.<sup>9</sup>

### B. The Arrest

A child may be arrested under the following situations only:

1. pursuant to an order of the juvenile court;
2. pursuant to the laws of arrest (for an adult);
3. by a law-enforcement officer if there is probable cause to believe that the child has engaged in delinquent conduct or conduct indicating a need for supervision; or

**[Note: There is no warrant requirement for an arrest by a law-enforcement officer if he has probable cause to believe the child committed an offense.]**

4. by a probation officer if there is probable cause to believe that the child has violated a condition of probation imposed by the juvenile court or a condition of release from detention.
5. pursuant to directive to apprehend (warrant).
6. by a probation officer if there is probable cause to believe that the child has violated a condition of release imposed by the juvenile court or referee after a detention hearings.

## C. Search and Seizure

### 1. Generally

Evidence discovered in a search of a child incident to arrest or frisk will be admissible only if the arrest or detention was lawful under constitutional and statutory standards. A child may be searched incident to an arrest under the same rules as with an adult. A child, his person, and his premises may be searched with a valid search warrant as with any adult.

### 2. School Searches

Because school officials have the responsibility to insure the safety of all its students, the standard for a search of an individual student is different than a search outside of a school. Fourth Amendment standards are diminished for searches by public school officials in schools. Rather than setting hard and fast rules for school searches the courts have created a balancing test where the legality of the search depends on the reasonableness, under all the circumstances.<sup>10</sup>

### 3. Consent

One of the specifically established exceptions to the requirements of both a warrant and probable cause is a search conducted pursuant to consent.<sup>11</sup> The consent question becomes much more of an issue for a child who's standing (right to object) or the expected right of privacy in an object or location is much cloudier.

#### 1. Third Party Consent

A warrantless search of a home is not unreasonable within the meaning of the fourth amendment if it has been voluntarily consented to by one having authority over the premises.<sup>12</sup> This also extends to parents giving consent to law enforcement officers to search their child's room.<sup>13</sup>

#### 2. Positive and Unequivocal

Any consent by a child needs to be positive and unequivocal, and the burden of showing that it is positive and unequivocal is upon the State by clear and convincing evidence that the consent was freely and voluntarily given.<sup>14</sup> In determining whether a consent is voluntary, the totality of circumstances test is applied (emphasis added).<sup>15</sup>

## **PART III - THE REFERRAL**

### **A. Transportation by Officer**

Almost all children who come to juvenile court have been arrested on suspicion of having committed a crime. Once the police detain a child they must, without unnecessary delay and without first taking the child elsewhere, do one of the following:

1. release the child to his parent, guardian, custodian, or other responsible adult upon that person's promise to bring the child before the juvenile court;
2. take the child before the juvenile court;
3. take the child to a detention facility;
4. take the child to a medical facility if the child is believed to suffer from a serious physical condition or illness that requires prompt treatment;
5. If a class C offense, without a referral to the juvenile court or charging the child under pre-authorized guidelines.
6. take the child to the child's school if the school agrees to assume responsibility for the child.<sup>16</sup>

### **B. The Probable Cause Finding**

Once a child is brought to a detention center, the intake or probation officer must make a preliminary investigation to determine whether the person brought in is a "child" within the meaning of the statute and that there is probable cause that the child violated the law or that the child is being held solely for deportation out of the United States.<sup>17</sup> However, if the child is to be detained after the preliminary investigation, an additional probable cause finding must be made by a Judge, Referee, Master, or Detention Magistrate within 48 hours.<sup>18</sup> The determination can be based upon any reliable information, and may be based upon representations of prosecutors or even police reports.<sup>19</sup> If the Judge, Referee, Master, or Detention Magistrate finds that there is no probable cause, even if an intake officer has previously established probable cause, the child shall be released. Probable Cause is not the finding that the child actually committed the crime beyond a reasonable doubt (as in the adjudication trial), but simply that there is more evidence for, than against, that he committed the offense. The probable cause determination can be made either just before or in conjunction with the initial Detention Hearing, as long as it is within the 48 hours of arrest.

### **C. Counsel and Release**

If the referral is for a minor offense and the child has no previous referral to the juvenile department, the probation officer or intake officer may counsel and release the child without further proceedings, or may release the child, but require him and his parents or guardians, to sign a written promise to appear before the probation officer at a later time.<sup>20</sup>

### **D. Deferred Prosecution**

Once a probation officer meets with the child he may, at the direction of the juvenile court, offer the child the chance to go on "Deferred Prosecution" or informal probation. The child enters a voluntary contract with the probation department whereby he agrees to follow certain conditions in exchange for no formal charges being brought against him. Deferred

Prosecution probation may not exceed six months and may require counselling or participation in a voluntary program designed to solve any personal, family, or other problems that might have caused the child to be suspected of breaking the law.<sup>21</sup> If the child fails to live up to the agreement the original charges may then be filed against the child. If the child successfully completes his "Deferred Prosecution", no further action will be taken on the charges. The child may not be detained during or as a result of the deferred prosecution<sup>22</sup> and any incriminating statements made by the child or any participant during the deferred prosecution cannot be used against the person making the statements in any future court hearing.<sup>23</sup>

## **PART IV - THE JUDICIAL PROCEEDINGS**

### **A. The Juvenile Detention Hearing**

If the juvenile intake officer or the juvenile probation officer do not release the child, a detention hearing is held to determine whether or not the child should be released from detention. A Child who is arrested and held in custody must have his first detention hearing **within two days of his arrest**, unless he is arrested on a weekend or holiday, then he will have a hearing on the next working day.<sup>24</sup> This hearing is informal and solely to determine whether or not the child should remain in detention. If he is detained, he will be entitled to another hearing every ten working days or until he either appears in court under a petition or is released.<sup>25</sup>

#### **1. Evidence**

At the detention hearing, the court may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses.<sup>26</sup> Be aware that on occasion the court may order counsel not to reveal items to the child or the child's parent, guardian, or guardian ad litem if in the court's opinion revealing items would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future.<sup>27</sup> The hearing may be held without the presence of the child's parents if the court has been unable to locate them. If no parent or guardian is present, the court shall appoint counsel or a guardian ad litem for the child.<sup>28</sup>

#### **2. Burden of Release**

The Family Code creates a presumption of release unless the court is convinced otherwise. At the conclusion of the hearing, the court will order the child released unless it finds that:

- (1) he likely to abscond or be removed from the jurisdiction of the court;
- (2) suitable supervision, care, or protection for him is not being provided by a parent, guardian, custodian, or other person;
- (3) he has no parent, guardian, custodian, or other person able to return him to the court when required;
- (4) he may be dangerous to himself or may threaten the safety of the public if

released; or

- (5) he has previously been found to be a delinquent child or has previously been convicted of a penal offense punishable by a term in jail or prison and is likely to commit another offense if released.<sup>29</sup>

3. **Conditions of Release**

A release may be conditioned on requirements reasonably necessary to insure the child's appearance at later proceedings, but the conditions of the release must be in writing and a copy furnished to the child.<sup>30</sup>

4. **Statement during Detention Hearing Inadmissible**

No statement made by the child at the detention hearing will be admissible against the child at any future hearing.<sup>31</sup>

5. **Order Expires in 10 Days**

A detention order is good for only 10 working days. The initial detention hearing may not be waived but subsequent detention hearings may be waived.<sup>32</sup>

## **B. The Adjudication Hearing (Tex. Fam. Code §54.03)**

### **1. General Information**

Because the juvenile court is not considered a criminal court, the adjudication hearing does not determine guilt or innocence, but whether the allegations are "true" or "not true".

The burden of proof in a juvenile adjudication hearing is beyond a reasonable doubt to have committed the act charged in the petition alleging delinquent conduct, the court will find the allegations "True". A finding of "True" is like a finding of Guilty in a criminal case.

### **2. The Plea Agreement**

The parties may enter into written stipulation or agreement as to the facts of the case and file them with the clerk of the court. The juvenile and his attorney may waive the calling of any witnesses and agree that if they were to testify, they would testify as the prosecutor will then state. The prosecutor then states into the record what the testimony of each of the witnesses and his attorney each agree on the record with that version of the facts. The juvenile and his attorney would have to waive the child's privilege against self-incrimination and take the witness stand and under oath confess to the offense charged.<sup>33</sup> This is usually done at the bench in front of the judge.

## **C. The Disposition Hearing**

This is the hearing to determine what will happen to a child who has been found to have engaged in delinquent conduct at the adjudication hearing. It is separate, distinct, and subsequent to the adjudication hearing. There is no right to a jury at the disposition hearing

unless the child is in jeopardy of a determinate sentence. A "disposition" may range from no action upon the juvenile, up to a 40-year sentence to be completed in the Texas Department of Corrections. In most cases, disposition will entail a placement or supervisory type of probation. Part III will describe the possible dispositions that a juvenile court judge may order for a child.

## **PART V - THE DISPOSITIONS**

A child in juvenile court who has been found "true" to an offense faces five possible dispositions:

1. No disposition;
2. Home on Probation;
3. Suitable Placement;
4. The Texas Juvenile Justice Department (TJJD);
5. The Texas Juvenile Justice Department (TJJD) with a possible transfer to the Texas Department of Corrections (TDC).

### **A. No Disposition**

No disposition may be made against a child 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 should dismiss the child and enter a final judgment without any disposition.

### **B. Home on Probation**

If the act the child committed was not too serious, and if the child has little or no past record, he may be placed on probation and allowed to remain in his own home. The time on probation may be as long as the court wishes but may not exceed the child's 18th birthday. Probation involves certain conditions—for example, attending school regularly. In addition, a child may be required to pay back any money he has stolen, or to repair any damage he has done, and he may be required to participate in a counselling program. He may also be required to perform some type of community service work.

### **C. Suitable Placement**

If the court decides that the child will not receive or is not receptive to proper guidance and supervision from his parents or guardian, he may be placed in the home of a responsible relative, in a foster home, or in a group home. However, no disposition placing the child outside the home may be made 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.<sup>34</sup> Even with placement outside the home, the probation term may not exceed the child's 18th birthday.

### **D. The Texas Juvenile Justice Department (TJJD)**

State programs run by the Texas Juvenile Justice Department are for children that are adjudicated for serious offenses or with a history in the juvenile system. Children in the Texas

Juvenile Justice Department work, attend school, learn trades and receive counselling. Children sent to the Texas Juvenile Justice Department can remain there until they are twenty-one years old. Except for the determinate sentence provision, the juvenile court judge sets only the maximum time a child may be detained which means the Juvenile Judge will state “commitment to the Texas Juvenile Justice Department until the child’s 19<sup>th</sup> birthday.” The Texas Juvenile Justice Department itself decides when a particular child is ready to be released. This usually depends on the offense, his conduct while there, and progress in counselling and rehabilitation.

## **PART VI - COST AND LIABILITIES**

If a disposition hearing is held, after notice and an opportunity to be heard, the court can order the child, parent, or other person, if financially able to do so, to pay a fee as costs of court of \$20.<sup>35</sup> In addition, if the judge orders that the child be placed under supervision of a probation officer, the judge can also order, after notice and an opportunity to be heard, that the child, parent or other person, if financially able to do so, pay to the court a probation fee of not more than \$15.00 a month during the period that the child continues on probation.<sup>36</sup>

If a child is found to have engaged in delinquent conduct arising from the commission of an offense in which property damage or loss or personal injury occurred, the juvenile court, on notice to all persons affected and on hearing, may order the child or a parent to make full or partial restitution to the victim of the offense.<sup>37</sup> Monetary restitution can only be for actual damages and may be used in addition to other remedies.<sup>38</sup> Periodic payments may be ordered by the court, but the period to repay may not extend past the 18th birthday of the child.<sup>39</sup>



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1 Tex. Fam. Code §51.04(a)  
2 Tex. Fam. Code §51.04(g).  
3 Tex. Fam. Code §54.10(a).  
4 Tex. Fam. Code §54.10(a)(1).  
5 Tex. Fam. Code §54.10(a)(2).  
6 Tex. Fam. Code §54.03(e)  
7 Tex. Fam. Code §51.01(6).  
8 Vasquez v. State, 739 S.W.2d 37 (Ct.Cr.App. 1987 En banc); In re Gault, 387 U.S. 1, 87 S.Ct. 1428  
[18 L.Ed.2d 527] (1967).  
9 Gault, 387 U.S. 1; Continental Casualty Co. v. Miller, 135 S.W.2d 501 (Waco Civ.App.1940,  
n.w.h.).  
10 New Jersey v. T.L.O., 469 U.S. 325, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985). Coronado v. State, 835  
S.W.2d 636 (Tex.Crim.App. 1992) [Texas Juvenile Law 163 (3rd Ed. 1992)].  
11 Nastu v. State, 589 S.W.2d 434 (Tex.Cr.App.).  
12 Spears v. State, 801 S.W.2d 571, 574 (Tex.App.--Fort Worth 1990); U.S. v. Martino, 664 F.2d  
860, (2nd Cir.), cert. denied, 458 U.S. 1110, 102 S.Ct. 3493.  
13 Gammon v. State, 672 S.W.2d 845 (Ct.App.--Corpus Christi)(1984); Jacobs v. State, 681 S.W.2d  
119 (Ct.App.--Houston)(1984).  
14 Swink, 617 S.W.2d 203; Escamilla v. State, Tex.Cr.App., 556 S.W.2d 796.  
15 Smith v. Texas, 797 S.W.2d 243 (Ct.App.--Corpus Christi 1990); Gammon v. State, 672 S.W.2d  
845 (Ct.App.--Corpus Christi 1984).  
16 Tex. Fam. Code §52.02(a).  
17 Tex. Fam Code §53.01(a).  
18 County of Riverside v. McLaughlin, 111 S. Ct. 1661, 114 L.Ed.2d. 49 (1991) [See 808 S.W.2d  
299]; Gerstein v. Pugh, 420 U.S. 103, 112 (1975); Moss v. Weaver, 525 F.2d 1258, 1260  
(5th Cir. 1976).  
19 Gerstein v. Pugh, 420 U.S. 103 (1975).  
20 Tex. Fam. Code §53.02(a).  
21 Tex. Fam. Code §53.03(a).  
22 Tex. Fam. Code §53.03(b).  
23 Tex. Fam. Code §53.03(c).  
24 Tex. Fam. Code §54.01.  
25 Tex. Fam. Code §54.01(h).  
26 Tex. Fam. Code §54.01(c).  
27 Tex. Fam. Code §54.01(c).  
28 Tex. Fam. Code §54.01(d).  
29 Tex. Fam. Code §54.01(e).  
30 Tex. Fam. Code §54.01(f).  
31 Tex. Fam. Code §54.01(g).  
32 Tex. Fam. Code §54.01(h).  
33 Texas Juvenile Law, Robert O. Dawson (third edition 1992).  
34 Tex. Fam. Code §54.04(c).  
35 Tex. Fam. Code §54.0411(a).  
36 Tex. Fam. Code §54.061(a).  
37 Tex. Fam. Code §54.041(b).  
38 Tex. Fam. Code §54.041(c).

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<sup>39</sup> Tex. Fam. Code §54.041(a).