

Determinate Sentence and Certification Cases

Hon. Stacey Mathews, Judge, 277th District Court

Hon. Clarissa Silva, Justice, Thirteenth Court of Appeals

Judicial Conference on Juvenile Justice
August 17, 2026

A VIEW FROM THE
TRIAL AND APPELLATE
BENCHES

DETERMINE SENTENCE CASES

BACKGROUND

- The Texas Legislature enacted the Determinate Sentence Act to address what it viewed as a gap in the coverage of juvenile statutes: serious, violent offenses committed by persons while under the minimum transfer age.
- A prosecutor has the discretion of whether to seek a determinate sentence. The Determinate Sentence Act presents an alternative to certification.
- There is no minimum age specified for determinate sentencing. Therefore, the Texas Family Code's minimum age of ten applies.

TEX. FAM. CODE § 51.02(2)(A), (B);

Dawson, et. al., Texas Juvenile Law, 9th Edition, 547-548

BACKGROUND

- Determinate sentence can also be used in cases in which the prosecutor has attempted unsuccessfully to transfer the juvenile to adult court for criminal prosecution.

Dawson, et. al., Texas Juvenile Law, 9th Edition, 548

PETITION

- A delinquency petition filed in the juvenile court is the first prerequisite for initiating proceedings under the determinate sentence statute.
- The delinquency petition must allege at least one of the covered offenses under Texas Family Code Section 53.045.

TEX. FAM. CODE § 53.045;

Dawson, et. al., Texas Juvenile Law, 9th Edition, 556

GRAND JURY APPROVAL

- Determinate sentence proceedings have begun when a grand jury votes to approve the delinquency petition, the approval is certified in writing to the juvenile court, and the certification is entered in the record of the case.

TEX. FAM. CODE § 53.045(d);

Dawson, et. al., Texas Juvenile Law, 9th Edition, 558-59

JURY

- The juvenile is entitled to a twelve-person jury if the juvenile chooses to have the evidence heard by a jury.
- The rationale for the requirement of a twelve-person jury is that a criminal defendant charged with a felony is entitled to a twelve-person jury and a fundamental principle of the determinate sentence legislation is to grant a juvenile all the rights to which they would have been entitled if charged with a felony in adult criminal court.

TEX. FAM. CODE § 54.03(c);

Dawson, et. al., Texas Juvenile Law, 9th Edition, 562

DISPOSITION

- The right to a jury does not extend to the disposition hearing in an ordinary delinquency proceeding.
- In accordance with the principle of affording juveniles under the Determinate Sentence Act the same rights as adults prosecuted for felonies, the Legislature established a right to jury sentencing in these special proceedings.

TEX. FAM. CODE § 54.04(a);

Dawson, et. al., Texas Juvenile Law, 9th Edition, 564

DISPOSITION

- The juvenile shall elect in writing to have a jury assess punishment. This must be done before the start of voir dire.
- If a finding of delinquent conduct is returned, the juvenile may change their election of who will assess punishment but only if the prosecutor consents.

TEX. FAM. CODE § 54.04(a);

Dawson, et. al., Texas Juvenile Law, 9th Edition, 564

RANGE OF PUNISHMENT

- Not more than 40 years if the conduct constitutes:
 - (i) a capital felony;
 - (ii) 1st degree felony; or
 - (iii) an aggravated controlled substance felony;
- Not more than 20 years if the conduct constitutes a 2nd degree felony; or
- Not more than 10 years if the conduct constitutes a 3rd degree felony.

TEX. FAM. CODE § 54.04(d)(3)

OPTION FOR PROBATION

- Court or jury may place the child on probation instead.
- Probation term may not exceed 10 years, and the underlying term of commitment cannot exceed 10 years.
- Court may extend probation before the sentence of probation expires, but the sentence of probation and any extension may not exceed 10 years.

TEX. FAM. CODE § 54.04(q)

TRANSFER OF SUPERVISION

- On motion by the State concerning a juvenile who is placed on probation under Section 54.04(q) for a period, including any extension ordered under Section 54.05, that will continue after their 19th birthday, the juvenile court shall hold a hearing to determine whether to transfer the juvenile to an appropriate district court or discharge the juvenile from probation.

TEX. FAM. CODE § 54.051(a)

Dawson, et. al., Texas Juvenile Law, 9th Edition, 569-70

TRANSFER OF SUPERVISION

- The hearing must be conducted before the juvenile's 19th birthday and in the same manner as a hearing to modify disposition under Section 54.05.

TEX. FAM. CODE § 54.051(b)

TRANSFER OF SUPERVISION

- If, after a hearing, the juvenile court determines to discharge the juvenile, the court shall specify a date on or before the juvenile's 19th birthday to discharge the sentence of probation.

TEX. FAM. CODE § 54.051(c)

- If, after a hearing, the juvenile court determines to transfer the juvenile, the court shall transfer the juvenile to an appropriate district court on the juvenile's 19th birthday.

TEX. FAM. CODE § 54.051(d)

- The juvenile court may transfer a child to an appropriate district court...without a showing that the child violated a condition of probation...

TEX. FAM. CODE § 54.051(f)

TRANSFER OF SUPERVISION

- A district court that exercises jurisdiction over a juvenile transferred under Subsection (d) shall place the juvenile on community supervision under Texas Code of Criminal Procedure article 42.12 for the remainder of the juvenile's probationary period under conditions consistent with those ordered by the juvenile court.

TEX. FAM. CODE § 54.051(e)

TRANSFER OF SUPERVISION

- Once transferred, the juvenile is subject to the rules under Texas Code of Criminal Procedure article 42.12.
- *Krupa v. State*, 286 S.W.3d 74 (Tex. App.—Waco 2009, reh'g denied) (the court held that “a district court . . . has authority under article 42.12 . . . to extend the probationary period set by the juvenile court when the juvenile fails to comply with the conditions of community supervision. To hold otherwise would lead to the absurd result that the district court has virtually no authority over the transferred juvenile.”)

Dawson, et. al., Texas Juvenile Law, 9th Edition, 569-70

REGISTRATION

- If the juvenile court places the child on probation for an offense for which registration as a sex offender is required by Chapter 62, Code of Criminal Procedure, and defers the registration requirement until completion of treatment for the sex offense under Subchapter H, Chapter 62, Code of Criminal Procedure, the authority under that article to reexamine the need for registration on completion of treatment is transferred to the court to which probation is transferred.

TEX. FAM. CODE § 54.051(g)

RELEASE HEARING

- The Texas Juvenile Justice Department is permitted to petition the committing juvenile court for authority to release a child on parole who has yet served the statutory minimum length of stay.

TEX. FAM. CODE § 54.11

Dawson, et. al., Texas Juvenile Law, 9th Edition, 575-582

TRANSFER HEARING

- The Texas Juvenile Justice Department may petition the committing juvenile court for authority to transfer the juvenile to prison if the juvenile's conduct indicates that the welfare of the community requires the transfer.
- The juvenile court must hold the hearing within sixty days of receiving the referral from the Texas Juvenile Justice Department.

TEX. FAM. CODE § 54.11

Dawson, et. al., Texas Juvenile Law, 9th Edition, 575-582

RELEASE OR TRANSFER HEARING

- Who is notified?
 - 1) person to be transferred or released;
 - 2) parents of the person;
 - 3) any legal custodian of the person, including TJJD;
 - 4) prosecuting attorney;
 - 5) victim of the offense, or a member of the victim's family; and
 - 6) any other person who has filed a written request with the court to be notified.

TEX. FAM. CODE § 54.11(b)

RELEASE OR TRANSFER HEARING

- Person to be transferred or released has a right to counsel.

TEX. FAM. CODE § 54.11(e)

- Hearing must be recorded.

TEX. FAM. CODE § 54.11(g)

RELEASE OR TRANSFER HEARING

- What evidence may the Court consider?
 - 1) Written reports and documents from JPOs, professional court employees, guardians ad litem appointed under TFC 51.11(d), professional consultants, TJJD employees, or employees of a post-adjudication secure correctional facility
 - 2) Witness testimony

TEX. FAM. CODE § 54.11(d)

RELEASE OR TRANSFER HEARING

- What factors should the Court consider to reach a decision?
 - the experiences and character of the person before and after commitment to TJJD;
 - the nature of the offense that the person was found to have committed and the way the offense was committed;
 - the abilities of the person to contribute to society;
 - the protection of the victim of the offense or any member of the victim's family;
 - the recommendations of TJJD, the juvenile board, juvenile probation department, and prosecuting attorney;
 - the best interests of the person; and
 - any other factor relevant to the issue to be decided.

RELEASE HEARING

- Two possible outcomes:
 - Order that the person be returned to TJJD with approval for release on supervision;
 - OR
 - Order that the person be returned to TJJD without approval for release on supervision.

TEX. FAM. CODE § 54.11(j)

TRANSFER HEARING

- Two possible outcomes:
 - Order that the person be returned to TJJD;
 - OR
 - Order that the person be transferred to TDCJ for the completion of their sentence.

TEX. FAM. CODE § 54.11(i)

RELEASE OR TRANSFER HEARING

- How should the Court weigh the different statutory factors?
- What should be included in the Court's order?
- How do you make a good record during the hearing?
- What can cause the Court's decision to be reversed on appeal?

CERTIFICATION CASES

3 TYPES OF TRANSFER PROCEEDINGS

- When a respondent is under 18 years of age at the time the proceedings are initiated by the filing of a petition for transfer.

TEX. FAM. CODE § 54.02(a)

- When the respondent is 18 years of age or older at the time the proceedings are initiated or at the time of court proceedings.

TEX. FAM. CODE § 54.02(j)

- Mandatory transfer to criminal court.

TEX. FAM. CODE § 54.02(m)

Dawson, et. al., Texas Juvenile Law, 9th Edition, 178-79

STUDY, EVALUATION & INVESTIGATION

- Prior to the certification hearing, the juvenile court shall order and obtain a complete diagnostic study, social evaluation, and full investigation of the child, the child's circumstances, and the circumstances of the alleged offense.

TEX. FAM. CODE § 54.02(d)

CERTIFICATION HEARING

- The juvenile court shall conduct a hearing without a jury to consider transfer of the child for criminal proceedings.

TEX. FAM. CODE § 54.02(c).

- In general, courts have permitted illegally obtained evidence, confessions obtained in violation Section 51.095 and hearsay evidence to be used in transfer hearings.
- A transfer hearing is not a trial but merely a hearing to determine where the trial will be conducted: criminal or juvenile court.
- The State is required to produce some evidence from which the juvenile court may rationally conclude that the respondent committed the offense alleged.

Dawson, et. al., Texas Juvenile Law, 9th Edition, 190

EVIDENCE AT THE HEARING

- At the transfer hearing the juvenile court can consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses.
- At least 5 days before the hearing, the court must provide the attorney for the child and prosecutor with access to all written materials the court will consider.

TEX. FAM. CODE § 54.02(e);

Dawson, et. al., Texas Juvenile Law, 9th Edition, 186

FACTORS TO CONSIDER

- The Court shall consider:
 - 1) whether the alleged offense was against person or property, with greater weight in favor of transfer given to offenses against the person;
 - 2) the sophistication and maturity of the child;
 - 3) the record and previous history of the child; and
 - 4) the prospects of adequate protection of the public and the likelihood of the rehabilitation of the child by the use of procedures, services, and facilities currently available to the juvenile court.
- A finding on each criteria is not required. All that is required is that the juvenile court has considered each of these factors in arriving at a decision whether to transfer the child.

TEX. FAM. CODE § 54.02(f);

Dawson, et. al., Texas Juvenile Law, 9th Edition, 194-95

REQUIRED FINDINGS – UNDER 18 CERTIFICATION

- The juvenile court may waive jurisdiction if:
 - 1) the child is alleged to have violated a penal law of the grade of felony;
 - 2) the child was:
 - A. 14 years of age or older at the time he is alleged to have committed the offense, if the offense is a capital felony, an aggravated controlled substance felony, or a felony of the first degree, and no adjudication hearing has been conducted concerning that offense; or
 - B. 15 years of age or older at the time the child is alleged to have committed the offense, if the offense is a felony of the second or third degree or a state jail felony, and no adjudication hearing has been conducted concerning that offense; and
 - 3) after a full investigation and a hearing, the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged and that because of the seriousness of the offense alleged or the background of the child the welfare of the community requires criminal proceedings.

REQUIRED FINDINGS – 18 AND OLDER

- The juvenile court may waive its jurisdiction if:
 - 1) the person is 18 years of age or older;
 - 2) the person was:
 - A. 10 years of age or older and under 17 years of age at the time the person is alleged to have committed a capital felony or an offense under Texas Penal Code Section 19.02;
 - B. 14 years of age or older and under 17 years of age at the time the person is alleged to have committed and aggravated controlled substance felony or a felony of the first degree;
 - C. 15 years of age or older and under 17 years of age at the time the person is alleged to have committed a felony of the second or third degree or a state jail felony;
 - 3) no adjudication concerning the alleged offense has been made or no adjudication hearing concerning the offense has been conducted;

TEX. FAM. CODE § 54.02(j)

REQUIRED FINDINGS – 18 AND OLDER

- 4) the juvenile court finds from a preponderance of the evidence that:
 - A. for a reason beyond the control of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person; or
 - B. after due diligence of the state it was not practicable to proceed in the juvenile court before the 18th birthday of the person because:
 - i. the state did not have probable cause to proceed in juvenile court and new evidence has been found since the 18th birthday of the person;
 - ii. the person could not be found; or
 - iii. a previous transfer order was reversed by an appellate court or set aside by a district court; and

TEX. FAM. CODE § 54.02(j)

REQUIRED FINDINGS – 18 AND OLDER

- 5) the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged.
- If these requirements are met, the juvenile court is permitted, but not required, to transfer the person to the appropriate adult court.
- If only a certification petition is filed and the juvenile court does not waive jurisdiction, then the case is dismissed for lack of jurisdiction. However, if an adjudication petition was also filed before the respondent's 18th birthday, then there is a possibility the respondent could be adjudicated following denial of certification.
- There is no authority to file an adjudication petition after the person's 18th birthday.

TEX. FAM. CODE § 54.02(j);

Dawson, et. al., Texas Juvenile Law, 9th Edition, 179-80

RELATED OFFENSES

- The juvenile court is required either to retain or transfer all offenses related to a single transaction, but it may transfer or retain different transactions.

TEX. FAM. CODE § 54.02(g);

Dawson, et. al., Texas Juvenile Law, 9th Edition, 196-99

COURT ORDERS

- If the juvenile court waives jurisdiction, it shall state specifically in the order its reasons for waiver and certify its action, including the written order and findings of the court.
- On transfer of the person for criminal proceedings, the person shall be dealt with as an adult and in accordance with the Code of Criminal Procedure.
- A transfer of custody made under this subsection is an arrest.
- The court shall set or deny bond as required by the Code of Criminal Procedure and other law applicable to the pretrial detention of adults accused of criminal offenses.

TEX. FAM. CODE § 54.02(h);

Dawson, et. al., Texas Juvenile Law, 9th Edition, 202

MANDATORY TRANSFER

- The juvenile court shall waive its jurisdiction if:
 1. the child has previously been transferred to a district court or criminal district court for criminal proceedings under this section, unless:
 - A. the child was not indicted in the matter transferred by the grand jury;
 - B. the child was found not guilty in the matter transferred;
 - C. the matter transferred was dismissed with prejudice; or
 - D. the child was convicted in the matter transferred, the conviction was reversed on appeal, and the appeal is final; and
 - 2) the child is alleged to have violated a penal law of the grade of felony.

TEX. FAM. CODE § 54.02(m)

APPEALS

- Most juvenile appeals go to the Supreme Court of Texas.
- Juvenile issues may be decided by the Texas Court of Criminal Appeals instead under limited circumstances.
- An order transferring a determinate sentence probation to the adult criminal court is not appealable. Similarly, the juvenile court's refusal to amend the determinate sentence conditions of probation is not appealable.

TEX. FAM. CODE § 56.01;

Dawson, et. al., Texas Juvenile Law, 9th Edition, 502-03

ADDITIONAL RESOURCES

- Texas Juvenile Justice Department
 - www.tjjd.texas.gov
- State Bar of Texas Juvenile Law Section
 - www.juvenilelaw.org
- Texas District & County Attorneys Association
 - www.tdcaa.com

QUESTIONS?

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2026 JCJJ

presented by



SUPREME COURT OF TEXAS PERMANENT JUDICIAL
COMMISSION FOR CHILDREN, YOUTH AND FAMILIES

Thank you!