



# THE TEXAS JUVENILE JUSTICE SYSTEM

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# **THE TEXAS JUVENILE JUSTICE SYSTEM**

## **– WHAT YOU NEED TO KNOW**

The Texas Juvenile Justice System can be confusing and complicated. This guide provides information to have a basic understanding of the court process and procedures, the differences between juvenile and adult criminal courts, answers to frequently asked questions, and resources. The purpose of this guide is to be a valuable resource through the Texas Juvenile Justice System. The laws that pertain to the juvenile justice system can be found in Title 3 of the Texas Family Code. This is also known as the Juvenile Justice Code. Someone unfamiliar with the juvenile justice system can think of the Juvenile Justice Code as the main group of laws that relate to juveniles that weave through and reference other laws in the Texas Penal Code, Rules of Civil Procedure, Texas Health and Safety Code, Texas Administrative Code, Texas Education Code, and others. Juvenile Courts operate separately from adult criminal courts and justice of the peace and municipal courts.

The purposes of the Juvenile Justice Code include protecting the public; providing treatment, training, and rehabilitation for children who commit unlawful acts while emphasizing accountability and the responsibility of the children and their caregivers for the child's conduct; to only remove children from the home when necessary; and to provide procedures that ensure fair hearings and that the constitutional and legal rights of children are recognized and enforced. Texas Family Code 51.01

### **IMPORTANT TERMS YOU SHOULD KNOW**

**Adjudication** – An adjudication is when a judge or jury decides whether it is true or not true that a juvenile engaged in delinquent conduct or conduct indicating a need for supervision. This is like the guilt/innocence phase of an adult criminal trial.

**Case** – The case refers to the charges that have been brought by the District or County Attorney's Office against a juvenile for engaging in delinquent conduct or conduct indicating a need for supervision. The case is the way the government brings charges against the juvenile in court.

**Child/Juvenile** – Both of these terms refer to the child who is involved in a case in the juvenile justice system. In Texas, the age of child must be 10 years old or older

and under 17 to be subject to the jurisdiction of a juvenile court. There are limited circumstances where a case may involve a child over the age of 17 who is subject to the jurisdiction of a juvenile court.

**Conduct Indicating a Need for Supervision (CINS)** – Conduct that includes the commission of offenses that are fine-only misdemeanors (other than a traffic offense), offenses that violate penal ordinances of any political subdivision, and the following offenses: runaway, a serious misbehavior expulsion, prostitution, electronic transmission of certain visual material depicting a minor, and false report to induce emergency response.

**Counsel/lawyer/attorney** – All of these terms refer to the lawyer or person who will be representing the juvenile in the court proceeding and who will be giving the juvenile legal advice in the case. The lawyer will be speaking for the juvenile and representing the juvenile's interests to the court, juvenile probation department, and the prosecutor or individuals who are taking part in the case pending against the juvenile. The juvenile will either be required to hire a lawyer, or a lawyer may be appointed to represent the juvenile.

**Delinquent Conduct** – Delinquent conduct is behavior by a juvenile (other than a traffic offense) that: violates a penal law of Texas or the United States punishable by confinement; violates an order of the court in JP or municipal court, a county court (fine only), or truancy court; or violates certain intoxication or under the influence offenses.

**Directive to Apprehend** – A directive to apprehend is what juvenile courts use to have authority to take a juvenile into custody when there is probable cause. A directive to apprehend is similar to a warrant for arrest.

**Disposition** – Disposition is the equivalent of sentencing in adult criminal court. If the allegation(s) is found to be true (the juvenile is found guilty), the disposition can include being sentenced to placement in a facility, to attend treatment, to pay restitution set by the court, to perform community service, to participate in a probation period, etc. If the juvenile allegation(s) is found to be not true (the juvenile is found to be not guilty), the disposition will be that the juvenile is cleared of the allegations in the petition and the charges will be dismissed. The disposition of the juvenile's case may only be decided by the judge except in a determinate sentencing case.

**Guardian ad Litem (GAL)** – A guardian is a person who has been given legal rights to a child by a court. A juvenile normally has a legal guardian when their biological parents are not alive or have given up their parental rights to the juvenile through a court proceeding. The guardian normally has decision-making powers over the juvenile and is responsible for taking care of the juvenile. In a juvenile case, the GAL is an appointed attorney who is responsible for making a recommendation to the court regarding what is in the child's best interest.

**Hearing** – A hearing is an appearance that is made by the juvenile, the juvenile's parents/guardian, and the juvenile's lawyer in front of the juvenile court. A hearing is like a trial and normally the judge will make a decision regarding the juvenile in the case. A hearing normally takes place at the courthouse but may be held in other locations such as the juvenile detention center where the juvenile is being held.

**Juvenile Probation Department** – The local entity responsible for overseeing juvenile probation services in a county or designated area. The juvenile probation department often provides a range of services to juveniles in their communities including prevention, intervention, diversion, supervision, and placement- both pre- and post-adjudication services.

**Offense** – An offense is the crime that the juvenile is alleged to have committed or engaged in. There are two types of offense categories in the juvenile law system: delinquent conduct and conduct indicating a need for supervision.

**Plea/Plea Bargain** – A plea is when the juvenile makes an admission of true (guilty) or not true (not guilty) to the offense (delinquent conduct or conduct indicating a need for supervision) they are alleged to have engaged in to the court. Sometimes a juvenile will plead true in a plea to an offense in exchange for an agreed disposition (punishment) that is recommended by the prosecutor to the court. The agreement usually also considers the disposition recommendation of the juvenile's probation officer. When this happens, the juvenile enters into a plea bargain with the prosecutor and there is a hearing before the judge. The judge does not have to follow the agreement and must explain the options in that event. A juvenile may withdraw a plea if the judge rejects the plea agreement.

**Petition** – A petition is a written document that is filed by the prosecution that contains the allegations against the juvenile. The document must state with reasonable particularity the time, place, and manner of the allegations(s) that the

juvenile engaged in delinquent conduct or conduct indicating a need for supervision. The juvenile must be given a written copy of the petition containing this information.

**Respondent** – A juvenile or child is referred to as a respondent in court documents and proceedings. This is because the juvenile justice code is considered a civil procedure code.

**Right** – A right is a freedom a juvenile has by law. A juvenile should know what rights they have so that they can make educated decisions when going through the juvenile justice process. It is important for a juvenile and their parents or guardians to speak with a lawyer about the juvenile's rights so that the juvenile takes all steps necessary to protect those rights.

**Sealing** – The sealing of a juvenile record is similar and often confused with the term expunction, which applies to the record of an adult criminal conviction or charge. When a juvenile's record is sealed, it is not automatically destroyed, it is stored in a manner in which only the custodian of records may access the records except under specific circumstances permitted by law.

**Status offense/status offender** – A status offense occurs when a juvenile does something an adult would not be punished for doing. Examples of these offenses include: smoking cigarettes, drinking alcohol, driving a car, running away, violating a curfew, not going to school, etc. A status offense is not always as serious of a crime, but a juvenile can get in trouble for doing it and be required to go through court proceedings.

**Summons** – A summons is a notice that the juvenile and their parents or guardian receives that informs them of the charges that have been filed against the juvenile and that the case is going to a juvenile court.

**Texas Juvenile Justice Department** – The Texas Juvenile Justice Department is the state agency that provides for the care, custody, treatment, and rehabilitation of the most serious felony juvenile offenders. The Texas Juvenile Justice Department is also responsible for the oversight of abuse, neglect, and exploitation allegations that are reported by juvenile probation departments and the certification and discipline of juvenile officers in addition to many other state agency responsibilities.

**True/Not true** – The juvenile system does not use the same adult criminal court terms of “guilty or not guilty.” Juveniles are found “True or Not True” in relation to the allegations that have been made against them. A juvenile will elect to plead “Not True” when they are saying they did not commit the offenses that are alleged against them and are requesting an adjudication hearing. If a juvenile pleads “true” then the court will find the allegations to be true and proceed with a disposition hearing.

### **What happens when a child is taken into custody?**

When a child is detained and taken into custody, police must notify the parent of the child’s action and the reason for taking the child into custody. The officer may take the child to (1) a parent or other responsible person who promises to bring the child back before the juvenile court, (2) a juvenile processing office, (3) a detention facility, (4) a medical facility, or (5) back to school if the school agrees to take the child. A juvenile being taken into custody is similar to an adult being arrested and may be used by some interchangeably.

A probable cause determination must be made by a judge within 48 hours if a juvenile is detained at a juvenile facility. The juvenile is entitled to a detention hearing no later than the second working day after detention. If the detention occurs on Friday or Saturday, then the detention hearing must be by the first working day after a juvenile is taken into custody. The parent/guardian/custodian must be given reasonable notice to attend, either oral or written.

### **Juvenile Statements**

Before making a written confession, the juvenile must receive warnings from a magistrate that they may remain silent, they have the right to an attorney, and the child can terminate the interview at any time. If the magistrate determines the juvenile wishes to waive their rights and wants to give a statement, the police may obtain a written statement from the child. That statement must be signed in the presence of the magistrate with no law enforcement officer or prosecuting attorney present.

The juvenile has the right to have their lawyer present when they are being questioned by anyone. Anything that is said by the juvenile during the interrogation may be used against them in the case brought against them.

## **TYPES OF HEARINGS AND APPEARANCES IN THE JUVENILE JUSTICE PROCESS**

### **The Detention Hearing**

If a juvenile is taken into custody and is being detained at a juvenile facility, a detention hearing is usually the first appearance a juvenile will make before the court. This hearing must take place within two working days of the juvenile being detained or the first business day if the juvenile is detained on a weekend. A business day is defined as Monday through Friday unless any of these days fall on a holiday. In the event that occurs, the hearing will be held on the next business day following the holiday. If the juvenile continues to be detained after this first hearing date, there must be a hearing held every 10 business days (two calendar weeks) for the court to determine whether they will continue to detain the juvenile.

At this hearing the court must make a decision whether to:

- (1) release the juvenile to his parents, a guardian, or a relative pending resolution of the case; or
- (2) hold the juvenile for two weeks (10 business days) until another hearing is held to review the five factors to determine if the juvenile is eligible to be released.

The detention hearing does not determine whether or not the allegations are true, this is decided through the adjudication and disposition process. The five factors being considered at a detention hearing are:

- (1) whether the juvenile is likely to abscond or runaway from the jurisdiction of the court;
- (2) whether the juvenile has appropriate or suitable supervision at home and/or if the juvenile is not responding to appropriate supervision;
- (3) whether the juvenile has a parent or guardian able to return them (the child) to court when required;
- (4) whether the juvenile is a danger to themselves or threatens the safety of the public; and
- (5) whether the juvenile has previously been found to be delinquent and if they were released, they might commit a new offense.



It is important to know that nothing a juvenile says at the detention hearing can be used against them in later hearings. Juveniles who are released from detention are often given orders upon release that require them to maintain law abiding status/conduct and to refrain from drug and alcohol use in addition to attending school. If the conditions of release are not followed, the court has the authority to issue a directive to apprehend and bring the juvenile back into detention for violating the conditions of their release.

### **The First Court Appearance**

For the juvenile's first court appearance that is not a detention hearing, generally there is no actual "hearing" at this setting, meaning that a no decision is made regarding whether a juvenile engaged in the alleged delinquent conduct or conduct indicating a need for supervision is true or not true. The first court appearance is normally an opportunity for law enforcement offense reports and predisposition reports (PDR) to be reviewed by the juvenile's lawyer and for the juvenile's lawyer to discuss the allegations with the prosecutor and any potential disposition or rehabilitation options with the juvenile probation department. Generally, a new court date will be given to the juvenile at this appearance where the hearing is "reset" approximately two to four weeks later.

Throughout the juvenile's case, it is normal for any type of hearing to have to be reset to another date. This typically happens if the court's docket is too busy that day to accommodate the hearing scheduled, if the juvenile was unable to be transported by the detention center staff to the courthouse to attend the hearing, if the lawyers on the case had a conflict of some kind preventing them from attending the hearing, if a witness such as the probation officer or case worker was unable to attend the hearing due to a conflict, or if a number of other factors occurred that required the hearing to be reset to a later date. If any hearings in the case have to be reset, make note of the new date of the hearing, and make sure you appear on the new date.

### **The Adjudication Hearing**

An adjudication hearing is held for the judge or jury to decide if the allegations brought against the juvenile are "true" or "not true." The state has the burden of proof to prove each element of the offense beyond a reasonable doubt. In a true plea, the state offers the evidence in their exhibit packet which may include law enforcement records and other evidence. The juvenile, in consultation with their lawyer, has the right to decide whether they will plea true or not true to the allegations. If the plea is not true, the juvenile has a choice whether to have the judge

or jury decide whether the allegations are true. During the adjudication hearing, the judge is required to give the juvenile information about the case and their rights, including the allegations made against the juvenile, the nature and possible consequences of the proceeding, the privilege against self-incrimination, the right to a trial and to confrontation of witnesses, the right to representation by an attorney, and the right to trial by jury.

Depending on the offense alleged and whether the state is pursuing a determinate sentence, there may be additional information that the judge goes over with the juvenile and their parent or guardian. The state must prove their case beyond a reasonable doubt. If the evidence is not sufficient, the judge or jury may find that the juvenile did not engage in the alleged conduct.

### **The Disposition Hearing**

If the allegations against the juvenile are found to be true by a judge or a jury, the judge will have a disposition hearing to decide what form of punishment will be given to the juvenile. This hearing is similar to the punishment phase or sentencing in an adult criminal trial. The only time that a jury may decide the disposition of a juvenile case is when the prosecution is seeking a determinate sentence. The disposition hearing usually occurs immediately after an adjudication hearing, but sometimes the judge will set the hearing for a different date. There are certain required findings the judge must make for a disposition hearing to move forward. The judge must find that a child needs rehabilitation or that the protection of the public or the child requires that disposition be made. If the judge or jury does not find that the child needs rehabilitation or that the protection of the public or protection of the child requires disposition, then the court has to dismiss the child and enter a final judgment of no disposition. During the disposition hearing, the judge may consider different types of evidence including social history reports, detention reports, live testimony, evidence that was admitted during adjudication, and victim testimony. All written evidence must be provided to the juvenile's attorney before the disposition hearing.

The Juvenile Probation Department will have prepared what is referred most commonly to as a Predisposition Report (PDR) that makes a recommendation for disposition (punishment). These recommendations are usually based on the sanction guideline levels found in the Juvenile Justice Code. Sometimes there is an agreed disposition that is recommended by the prosecution (state) in agreement with the probation department and the juvenile with their lawyer. An agreed disposition

would only go before a judge and the judge is not required to follow the agreement. 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 is required to make certain findings in its order which include that it is the court's determination that it is in the child's best interests to be placed outside the child's home; reasonable efforts were made to prevent or eliminate the need for the child's removal from the home and to make it possible for the child to return to the child's home; and 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.

### **Disposition Options**

During disposition, there are several options of what can happen with a juvenile that must be decided by the court or, the jury in a determinate sentence case. The juvenile can be placed on probation supervision at their home, they can be removed from their home and placed at a post adjudication facility or other appropriate placement like a treatment facility, or they can be committed to the Texas Juvenile Justice Department if the adjudication was for a felony offense. The required findings for a juvenile to be placed outside of the home include that it is in the best interest of the child to be placed outside of their home, that reasonable efforts were made to prevent or eliminate the need for removing the juvenile from their home and to make it possible for them to return home, and the juvenile cannot be provided the quality of care and level of support and supervision they need to meet the conditions of probation. Before committing a juvenile to the Texas Juvenile Justice department there must be a special finding that the juvenile has a behavioral health or other special need that cannot be met with the resources available in the community.

If the allegations against a juvenile are found to be true, the court has several disposition options. These include:

- **Deferred prosecution** – Deferred prosecution is a voluntary alternative to formal adjudication where the child, parent, prosecuting attorney, and the juvenile probation department all agree to certain supervisory conditions. It is important to know that for certain offenses, deferred prosecution can be offered by the Juvenile Probation Department before a juvenile is formally charged as a method of diversion to keep a juvenile out of the juvenile justice system. Deferred prosecution can also be recommended by the prosecutor, can be agreed to by plea negotiations between a lawyer and the prosecutor, or can be granted

by the judge of the juvenile court. This option is generally reserved for juveniles who commit less serious offenses and who are not habitual offenders and can last from six to 12 months.

- Probation Supervision – This type of probation allows juveniles to stay living with their families while completing the terms and conditions of probation. Juveniles will be required to report to their probation officer once or twice a month, but it can also be as frequent as every week. Probation departments may also work with the Juvenile Courts in their area to conduct specialty courts that focus on specialized rehabilitation. For example, there are drug courts, dual system courts for children in care of Child Protective Services and the juvenile probation department, courts that have programs for human trafficking victims, and a variety of other specialized court programs.
- Detention Placement (Post Adjudication Detention) – If a juvenile is unable to be successful on probation at home, then the juvenile can be ordered to complete a long-term program, averaging six to nine months, in their county detention facility or any other facility deemed appropriate by the court.
- Commitment to the Texas Juvenile Justice Department – The Texas Juvenile Justice Department is the state agency that provides for the care, custody, treatment, and rehabilitation of the most serious felony juvenile offenders.

### **Motion to Modify Disposition Hearing**

If the juvenile does not follow their conditions of probation or is alleged to have commit a new offense, the probation department may request, or the prosecutors may file, to have a motion to modify disposition hearing. This is similar to a disposition hearing, except that the violations are only required to be proved by a preponderance of the evidence, which is a lower proof than beyond a reasonable doubt. The juvenile may plea true or not true to the allegations. These types of hearings only go before a juvenile court and if the evidence is sufficient to show that the juvenile violated their conditions of probation (which may include a new allegation of an offense) than the judge may amend or modify the juvenile's conditions of probation by adding additional conditions, placing the juvenile outside of their home, or placing the juvenile in the custody of the Texas Juvenile Justice Department if the original conduct the juvenile was found to have engaged in was a felony.

## **Waiver of Jurisdiction and Discretionary Transfer to Criminal Court/Certification Hearing**

A waiver of jurisdiction and discretionary transfer to criminal court hearing will take place if the prosecutor wants to transfer the juvenile to adult criminal court to be tried as an adult. It is known as certification because the juvenile is being certified as an adult. A hearing is required and may not be waived. The prosecutor must show that it is likely the juvenile committed the offense and meets the legal requirements for the transfer. The legal requirements for the certification include:

- the child is alleged to have committed a felony; the child was 14 years old or older at the time the alleged offense was committed and the alleged offense is a capital felony, aggravated controlled substance felony, or a first degree felony; the child was 15 years old or older at the time the alleged offense was committed and the alleged offense is a second, third, or state jail felony; and
- the juvenile court determines that there is probable cause to believe that the child committed the offenses alleged and that the seriousness of the alleged offense, or the background of the child and the welfare of the community, requires criminal proceedings. Texas Family Code § 54.02.

During the certification hearing, the court must find that there is probable cause for the transfer to adult criminal court. This is a judge-only hearing and the court will consider a complete diagnostic study, social evaluation, a full investigation of the child, circumstances of the child, and the circumstance of the alleged offense(s). The court must determine whether, because of the nature of the offense, or because of the child's background, the safety and protection of the community require that the child be tried as an adult.

If the juvenile court transfers the case to the adult criminal court, the prosecuting attorney must seek an indictment against the offender from the grand jury. If the grand jury does not return an indictment, the case must be dismissed. The case may not be remanded, or returned, to the juvenile court.

It is important to know that a juvenile may not be transferred if they are under 14 years of age or if they are accused of committing a misdemeanor.

## **Determinate Sentence**

Instead of proceeding with a certification hearing, a prosecutor can in some cases pursue a determinate sentence. Unlike certification, which is based on age and offense, a determinate sentence is controlled by the type of offense. The Texas Family Code lists offenses that are eligible for determinate sentencing, including: Capital murder; Murder; Manslaughter; Aggravated Kidnapping; Sexual Assault & Aggravated Sexual Assault; Aggravated Assault; Aggravated Robbery; Injury to a Child, Elderly, or Disabled Individual; Felony Deadly Conduct Involving Discharging a Firearm; Controlled Substance First-Degree Felony; Criminal Solicitation; Indecency with a Child; Criminal Solicitation of a Minor; Attempted Murder or Attempted Capital Murder; Arson Involving Bodily Injury or Death; Intoxication Manslaughter; and Criminal Conspiracy. When deciding whether to pursue a determinate sentence, the prosecutor will consider the nature and severity of the offense; the juvenile's age, criminal history, and level of culpability; progress; behavior in detention; and risk of re-offending. A grand jury must approve a determinate petition when the prosecution is seeking a determinate sentence. Under a determinate sentence a juvenile is committed to the Texas Juvenile Justice Department (TJJD) or placed on determinate sentence until their 19th birthday and may be transferred to the adult system for the remainder of their sentence. A determinate sentence transfer hearing is required to transfer a juvenile to adult criminal court.

## **The Fitness to Proceed Hearing**

If the juvenile has a history of mental illness or intellectual disability, or if the court deems it necessary, there may be a fitness to proceed hearing to determine the juvenile is fit to proceed with any certification, adjudication, disposition, or modification of disposition hearing. At this hearing, the court will determine if the juvenile is able to understand what is happening in their case and is capable of participating in their defense. If certain criteria are met, the prosecution may file to have a restoration hearing for the juvenile court to determine if the juvenile is fit to proceed.

## **Appeal**

The lawyer for the juvenile can appeal the decision they receive from a judge or jury to a higher court to review the outcome. If the juvenile enters into a plea bargain agreement, an appeal will be very difficult and will likely be unsuccessful. Therefore, it is very important that the juvenile and their parent or guardian understand and agree with the plea bargain agreement before the juvenile takes this agreement. Once

the agreement is entered into, it can only be changed in certain, limited circumstances.

### **Sealing of Juvenile Records**

A juvenile may have their records sealed if certain requirements are met. There are multiple ways a juvenile's record may be sealed. If a juvenile is successful in having their records sealed, they will then have the right to deny that they have ever been found delinquent by a court. Further, law enforcement agencies are required to report that the juvenile does not have a record if the records have been sealed.

If a child was referred to Juvenile Court for a Conduct Indicating a Need of Supervision (CINS) case and never referred for delinquent conduct (a misdemeanor or felony), then their records will be sealed when they turn 18 as long as they do not have an adult felony conviction or any pending adult charges for felony or jailable misdemeanor offenses.

If a child was referred to Juvenile Court for delinquent conduct but never adjudicated (i.e., "found guilty") or was adjudicated for a misdemeanor but not a felony, then their records will be sealed when they turn 19 as long the child: does not have an adult conviction for a jailable misdemeanor or felony, has not been transferred by a juvenile court to a criminal court for prosecution under the Family Code, and does not have any pending adult or juvenile charges. The child does not have to apply to the Juvenile Court for this type of juvenile records sealing.

If a child was adjudicated for a felony or does not otherwise meet the criteria for sealing described above, they may file an application (with or without an attorney) asking the Juvenile Court to seal the records. The application for sealing juvenile records process is described in Sec. 58.256 of the Texas Family Code.

A child may apply to the Juvenile Court to have such records sealed only if they:

- (1) are at least 17 years of age, or if younger than 17 years of age and at least one year has elapsed after the date of final discharge in each matter for which they were referred to the juvenile probation department;
- (2) do not have any delinquent conduct matters pending with any juvenile probation department or juvenile court;

- (3) were not transferred by a juvenile court to a criminal court for prosecution under Section 54.02;
- (4) have not been convicted of a felony as an adult; and
- (5) do not have any pending charges as an adult for a felony or a misdemeanor punishable by confinement in jail.

The Juvenile Court may decide to order a child's records sealed with or without a hearing. The Juvenile Court may not deny an application for sealing without first having a hearing. If the Juvenile Court entered a finding that the allegations are not true, the Juvenile Court is required to immediately order the sealing of all records related to the alleged conduct that was found not true.

## **COMMONLY ASKED QUESTIONS RELATED TO JUVENILE LAW**

### **What should a juvenile expect if they are placed on probation?**

Under court ordered community supervision probation, a juvenile can be required to attend school, abide by curfews, attend counseling, participate in specified programs, and pay restitution. Community service is a mandatory condition of probation, subject only to limited exceptions. A juvenile may be placed on probation for any term, but in most cases not past their 18th birthday. Other conditions may include random drug tests and driver's license suspensions.

### **What should a parent or guardian when visiting their child in Detention or Placement?**

A parent or guardian visiting their child placed outside of the home should be expected to be difficult. During the visit at a secure facility, the child may be in shackles and handcuffs, dressed in detention clothing, and may just be upset because of their situation.

Texas has strict rules and regulations for pre-adjudication (detention) and post adjudication facilities (secure and nonsecure placement). It is important to obtain a copy of the rules and regulations for the facility in which a child is placed. A parent or guardian should review the disciplinary rules and understand that they should be applied equally to all detainees in the facility. Note that solitary confinement should be prohibited, but a child can be confined to their room or cell sparingly and in



certain situations. Physical restraints and chemicals should be used only as a last resort and should be carefully controlled by the facility.

A non-secure facility may allow a juvenile to wear their own clothing and use their own bathroom supplies. If a juvenile is in a secure facility, such as a placement or correctional facility (TJJD), a child must receive education, medical treatment, mental healthcare, and rehabilitation. It is important for parents and guardians to visit when possible and permitted. They can also talk to the juvenile's caseworker and the other staff working with the juvenile to see how their child is doing. Parents and guardians may also write to and speak with the juvenile while the child is in detention. Parent and guardians also should make sure their phone number is on the child's approved list.

The juvenile's parent or guardian should immediately notify the staff that a juvenile is on medication and determine how to get the medicine to the facility to be provided to the juvenile. Juveniles have a right to medical treatment while detained and the facility has to provide all juveniles access to medical treatment and medicine. The facility cannot use any excuses not to provide medical treatment to juveniles who are detained.

### **Does a juvenile have the right to have an attorney?**

In any juvenile justice proceeding, a juvenile has the right to be represented by a lawyer. If the juvenile does not have a lawyer, the court must order the parents or guardian to employ a lawyer to represent the juvenile if the court determines that: the child is not already represented by a lawyer, that the parent or guardian is not financially able to employ a lawyer for the child, and the child's right to a lawyer has not been or cannot be waived. If the court determines that the child's parents or guardian are financially unable to pay for a lawyer for the child, the court will appoint a lawyer to represent the child. Texas Family Code § 51.10.

A lawyer will advocate for their client's, the juvenile's, interests at the hearings and explain the options and choices stemming from the conduct alleged against the juvenile. No lawyer can guarantee an outcome for a juvenile case. A lawyer should explain all of the possible outcomes and give educated guesses about ultimate results based on experience and their understanding of the law. This advice is extremely valuable, even without a guarantee. A lawyer may know more about the underlying law and quite possibly can help prevent future problems stemming from this particular situation. A lawyer does not do the same job as the probation officer, case

worker, social worker, doctor, police officer, or prosecutor. A lawyer for a juvenile is responsible for helping the juvenile make decisions about their case and for explaining all of the options. A lawyer should try to get their client the best outcome possible and must strongly represent the juvenile's interests and defend them as well as possible.

The Texas Task Force on Indigent Defense may be contacted by email at [FairDefense@courts.state.tx.us](mailto:FairDefense@courts.state.tx.us) or by phone at (512) 936-6994 to find out what the qualifications for handling juvenile cases are in a specific county. A state law called the "Texas Fair Defense Act" mandates that every Texas county establish specific requirements an attorney has to meet to be able to practice juvenile law. If a parent or guardian is paying for the lawyer, the parent or guardian will be allowed to choose to hire which attorney represents the juvenile. If the court is appointing a lawyer for the juvenile, that lawyer must be permitted to represent the juvenile. However, even an appointed lawyer should be qualified. It is important to understand that a lawyer will represent the child and not the parent or guardian, even if the parent or guardian is paying the lawyer's bill. The child is ultimately responsible for their own decisions. Even if the child and the parents disagree, the lawyer will follow the decision of the child. Nonetheless, without a lawyer, the decisions a juvenile makes will be less informed and without proper guidance.

**Does the child's parent or guardian have to attend the appearances before the court?**

Yes. Each parent, custodian, and guardian of the child must attend each hearing of the child unless the court waives attendance. Texas Family Code § 51.115. If a parent, custodian, or guardian of a child fails to attend a hearing, they could be punished by the court for contempt by a fine in an amount of up to \$1,000 and the court could also order the attendance of counseling or educational courses in addition to the fines. Texas Family Code § 51.115.

**What can the Juvenile Court order a parent or guardian to do?**

A parent or guardian can be ordered to do all kinds of things in a case against their child, including paying restitution, attending hearings, attending counseling, and further prohibiting any behavior by the parent or guardian that may be injurious to the child. Moreover, if the court orders a parent or guardian to do something and the parent refuses or fails to accomplish the task ordered, the court can hold the parent in contempt and could fine them up to \$500 or order county jail time for the parent for up to six months. A court order for any task is important, and failure to

comply is serious. This applies to an order for either parent or child to do any task deemed necessary by the court.

### **Will this be on my record?**

It depends. Whether a juvenile record may be sealed depends on multiple factors including the type of offense alleged, the outcome of the juvenile case, and whether there are any pending criminal allegations as discussed above. If a juvenile is certified as an adult or given a determinate sentence (probation or commitment), their record may not be sealed. Sealing does not apply to justice or municipal court records. Each county has its own procedures for sealing records. A parent or guardian should contact the juvenile's probation officer, the juvenile court, or may consult an attorney with questions or assistance with sealing. Please refer to the Sealing of Records section of this handout for more information.

### **What else should I know about my child's case?**

The juvenile justice system is complicated and can be overwhelming. Showing support for a child involved in the system is of utmost importance at this time. Dress nicely, be respectful of and attentive to the proceedings, and show not only the court but also the child that you care. Ultimately, a parent's or guardian's continued support will help their child's case and it also will help their child to know that they are there for them. Parents and guardians should get all contact information for the probation officer, case worker, and anyone else involved in their child's case, and have their contact information readily available.

Ultimately, the parent/guardian is the responsible adult in this situation, and they should be well informed and involved in their child's case to help ensure the best possible outcome. Pay attention to dates and times for court appearances. Take notes, find out all of the information available, and be organized. Stay in touch with the child's lawyer until disposition, follow through with the child's probation officer after disposition, and provide whatever information they need or request. And, most importantly, be patient with and supportive of the child every step of the process.

## USEFUL RESOURCES

### Legal

Texas Juvenile Justice Department

[www.tjjd.texas.gov](http://www.tjjd.texas.gov)

Texas Family Code Title 3 – Juvenile Justice Code

<https://statutes.capitol.texas.gov/?link=FA>

Juvenile law Section of the State Bar of Texas

[www.juvenilelaw.org](http://www.juvenilelaw.org)

The Texas Young Lawyers Association

[www.tyla.org](http://www.tyla.org)

2020 Juvenile Justice Handbook. Office of the Texas Attorney General

<https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/juvenile-justice/JuvenileJusticeHandbook.pdf>

2018 Texas Juvenile Law book, Texas Juvenile Justice Department

<https://www2.tjjd.texas.gov/publications/legal/texas-juvenile-law-9.pdf>

Office of Juvenile Justice and Delinquency Prevention

<https://ojjdp.ojp.gov/>

Texas Association of Specialty Courts

<http://www.tasctx.org/>

The Gault Center

<https://www.defendyouthrights.org/>

Disability Rights Texas

<https://disabilityrightstx.org/>

State Bar of Texas Lawyer Referral & Information Services

[https://www.texasbar.com/AM/Template.cfm?Section=Lawyer\\_Referral\\_Service\\_LRIS\\_](https://www.texasbar.com/AM/Template.cfm?Section=Lawyer_Referral_Service_LRIS_)

Texas Advocacy Project  
[www.texasadvocacyproject.org](http://www.texasadvocacyproject.org)

Texas Juvenile Mental Health and Intellectual and Developmental  
Disabilities Law Bench Book  
<https://www.texasjcmh.gov/media/secdby2/jbb-2023-for-web.pdf>

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can be found online at  
[texasbar.com/resources](http://texasbar.com/resources).



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