

FAMILY CODE
CHAPTER 56. APPEAL

Sec. 56.01. RIGHT TO APPEAL. (a) An appeal from an order of a juvenile court is to a court of appeals and the case may be carried to the Texas Supreme Court by writ of error or upon certificate, as in civil cases generally.

(b) The requirements governing an appeal are as in civil cases generally. When an appeal is sought by filing a notice of appeal, security for costs of appeal, or an affidavit of inability to pay the costs of appeal, and the filing is made in a timely fashion after the date the disposition order is signed, the appeal must include the juvenile court adjudication and all rulings contributing to that adjudication. An appeal of the adjudication may be sought notwithstanding that the adjudication order was signed more than 30 days before the date the notice of appeal, security for costs of appeal, or affidavit of inability to pay the costs of appeal was filed. A motion for new trial seeking to vacate an adjudication is timely if the motion is filed not later than the 30th day after the date on which the disposition order is signed.

(c) An appeal may be taken:

(1) except as provided by Subsection (n), by or on behalf of a child from an order entered under:

(A) Section 54.03 with regard to delinquent conduct or conduct indicating a need for supervision;

(B) Section 54.04 disposing of the case;

(C) Section 54.05 respecting modification of a previous juvenile court disposition; or

(D) Chapter 55 by a juvenile court committing a child to a facility for the mentally ill or mentally retarded; or

(2) by a person from an order entered under Section 54.11(i)(2) transferring the person to the custody of the institutional division of the Texas Department of Criminal Justice.

(d) A child has the right to:

(1) appeal, as provided by this subchapter;

(2) representation by counsel on appeal; and

(3) appointment of an attorney for the appeal if an attorney cannot be obtained because of indigency.

(e) On entering an order that is appealable under this section, the court shall advise the child and the child's parent, guardian, or guardian ad litem of the child's rights listed under Subsection (d) of this section.

(f) If the child and his parent, guardian, or guardian ad litem express a desire to appeal, the attorney who represented the child before the juvenile court shall file a notice of appeal with the juvenile court and inform the court whether that attorney will handle the appeal. Counsel shall be appointed under the standards provided in Section 51.10 of this code unless the right to appeal is waived in accordance with Section 51.09 of this code.

(g) An appeal does not suspend the order of the juvenile court, nor does it release the child from the custody of that court or of the person, institution, or agency to whose care the child is committed, unless the juvenile court so orders. However, the appellate court may provide for a personal bond.

(h) If the order appealed from takes custody of the child from his parent, guardian, or custodian, the appeal has precedence over all other cases.

(i) The appellate court may affirm, reverse, or modify the judgment or order, including an order of disposition or modified disposition, from which appeal was taken. It may reverse or modify an order of disposition or modified order of disposition while affirming the juvenile court adjudication that the child engaged in delinquent conduct or conduct indicating a need for supervision. It may remand an order that it reverses or modifies for further proceedings by the juvenile court.

(j) Neither the child nor his family shall be identified in an appellate opinion rendered in an appeal or habeas corpus proceedings related to juvenile court proceedings under this title. The appellate opinion shall be styled, "In the matter of, " identifying the child by his initials only.

(k) The appellate court shall dismiss an appeal on the state's motion, supported by affidavit showing that the appellant has escaped from custody pending the appeal and, to the affiant's knowledge, has not voluntarily returned to the state's custody on or before the 10th day after the date of the escape. The court may not dismiss an appeal, or if the appeal has been dismissed, shall

reinstate the appeal, on the filing of an affidavit of an officer or other credible person showing that the appellant voluntarily returned to custody on or before the 10th day after the date of the escape.

(1) The court may order the child, the child's parent, or other person responsible for support of the child to pay the child's costs of appeal, including the costs of representation by an attorney, unless the court determines the person to be ordered to pay the costs is indigent.

(m) For purposes of determining indigency of the child under this section, the court shall consider the assets and income of the child, the child's parent, and any other person responsible for the support of the child.

(n) A child who enters a plea or agrees to a stipulation of evidence in a proceeding held under this title may not appeal an order of the juvenile court entered under Section 54.03, 54.04, or 54.05 if the court makes a disposition in accordance with the agreement between the state and the child regarding the disposition of the case, unless:

(1) the court gives the child permission to appeal; or

(2) the appeal is based on a matter raised by written motion filed before the proceeding in which the child entered the plea or agreed to the stipulation of evidence.

(o) This section does not limit a child's right to obtain a writ of habeas corpus.

Acts 1973, 63rd Leg., p. 1460, ch. 544, Sec. 1, eff. Sept. 1, 1973. Amended by Acts 1987, 70th Leg., ch. 385, Sec. 14, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 680, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 262, Sec. 48, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 1086, Sec. 15, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 74, Sec. 2, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1477, Sec. 15, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1297, Sec. 33, eff. Sept. 1, 2001.

Sec. 56.02. TRANSCRIPT ON APPEAL. (a) An attorney retained to represent a child on appeal who desires to have included in the record on appeal a transcription of notes of the reporter has the responsibility of obtaining and paying for the transcription and furnishing it to the clerk in duplicate in time for inclusion in the record.

(b) The juvenile court shall order the reporter to furnish a transcription without charge to the attorney if the court finds, after hearing or on an affidavit filed by the child's parent or other person responsible for support of the child that the parent or other responsible person is unable to pay or to give security therefor.

(c) On certificate of the court that a transcription has been provided without charge, payment therefor shall be made from the general funds of the county in which the proceedings appealed from occurred.

(d) The court reporter shall report any portion of the proceedings requested by either party or directed by the court and shall report the proceedings in question and answer form unless a narrative transcript is requested.

Acts 1973, 63rd Leg., p. 1460, ch. 544, Sec. 1, eff. Sept. 1, 1973. Amended by Acts 1991, 72nd Leg., ch. 674, Sec. 1, eff. Sept. 1, 1991.

Sec. 56.03. APPEAL BY STATE IN CASES OF VIOLENT OR HABITUAL OFFENDER. (a) In this section, "prosecuting attorney" means the county attorney, district attorney, or criminal district attorney who has the primary responsibility of presenting cases in the juvenile court. The term does not include an assistant prosecuting attorney.

(b) The state is entitled to appeal an order of a court in a juvenile case in which the grand jury has approved of the petition under Section 53.045 if the order:

(1) dismisses a petition or any portion of a petition;

(2) arrests or modifies a judgment;

(3) grants a new trial;

(4) sustains a claim of former jeopardy; or

(5) grants a motion to suppress evidence, a confession, or an admission and if:

(A) jeopardy has not attached in the case;

(B) the prosecuting attorney certifies to the trial court that the appeal is not taken for the purpose of delay; and

(C) the evidence, confession, or admission is of substantial importance in the case.

(c) The prosecuting attorney may not bring an appeal under Subsection (b) later than the 15th day after the date on which the order or ruling to be appealed is entered by the court.

(d) The state is entitled to a stay in the proceedings pending the disposition of an appeal under Subsection (b).

(e) The court of appeals shall give preference in its docket to an appeal filed under Subsection (b).

(f) The state shall pay all costs of appeal under Subsection (b), other than the cost of attorney's fees for the respondent.

(g) If the respondent is represented by appointed counsel, the counsel shall continue to represent the respondent as appointed counsel on the appeal. If the respondent is not represented by appointed counsel, the respondent may seek the appointment of counsel to represent the respondent on appeal. The juvenile court shall determine whether the parent or other person responsible for support of the child is financially able to obtain an attorney to represent the respondent on appeal. If the court determines that the parent or other person is financially unable to obtain counsel for the appeal, the court shall appoint counsel to represent the respondent on appeal.

(h) If the state appeals under this section and the respondent is not detained, the court shall permit the respondent to remain at large subject only to the condition that the respondent appear in court for further proceedings when required by the court. If the respondent is detained, on the state's filing of notice of appeal under this section, the respondent is entitled to immediate release from detention on the allegation that is the subject of the appeal. The court shall permit the respondent to remain at large regarding that allegation subject only to the condition that the respondent appear in court for further proceedings when required by the court.

(i) The Texas Rules of Appellate Procedure apply to a petition by the state to the supreme court for review of a decision of a court of appeals in a juvenile case.

Added by Acts 2003, 78th Leg., ch. 283, Sec. 25, eff. Sept. 1, 2003.