

FAMILY CODE

CHAPTER 53. PROCEEDINGS PRIOR TO JUDICIAL PROCEEDINGS

Sec. 53.01. PRELIMINARY INVESTIGATION AND DETERMINATIONS; NOTICE TO PARENTS. (a) On referral of a person believed to be a child or on referral of the person's case to the office or official designated by the juvenile board, the intake officer, probation officer, or other person authorized by the board shall conduct a preliminary investigation to determine whether:

(1) the person referred to juvenile court is a child within the meaning of this title; and

(2) there is probable cause to believe the person:

(A) engaged in delinquent conduct or conduct indicating a need for supervision; or

(B) is a nonoffender who has been taken into custody and is being held solely for deportation out of the United States.

(b) If it is determined that the person is not a child or there is no probable cause, the person shall immediately be released.

(c) When custody of a child is given to the office or official designated by the juvenile board, the intake officer, probation officer, or other person authorized by the board shall promptly give notice of the whereabouts of the child and a statement of the reason the child was taken into custody to the child's parent, guardian, or custodian unless the notice given under Section 52.02(b) provided fair notice of the child's present whereabouts.

(d) Unless the juvenile board approves a written procedure proposed by the office of prosecuting attorney and chief juvenile probation officer which provides otherwise, if it is determined that the person is a child and, regardless of a finding of probable cause, or a lack thereof, there is an allegation that the child engaged in delinquent conduct of the grade of felony, or conduct constituting a misdemeanor offense involving violence to a person or the use or possession of a firearm, illegal knife, or club, as those terms are defined by Section 46.01, Penal Code, or prohibited weapon, as described by Section 46.05, Penal Code, the case shall be promptly forwarded to the office of the prosecuting attorney, accompanied by:

(1) all documents that accompanied the current referral; and

(2) a summary of all prior referrals of the child to the juvenile court, juvenile probation department, or a detention facility.

(e) If a juvenile board adopts an alternative referral plan under Subsection (d), the board shall register the plan with the Texas Juvenile Probation Commission.

(f) A juvenile board may not adopt an alternate referral plan that does not require the forwarding of a child's case to the prosecuting attorney as provided by Subsection (d) if probable cause exists to believe that the child engaged in delinquent conduct that violates Section 19.03, Penal Code (capital murder), or Section 19.02, Penal Code (murder).

Acts 1973, 63rd Leg., p. 1460, ch. 544, Sec. 1, eff. Sept. 1, 1973. Amended by Acts 1995, 74th Leg., ch. 262, Sec. 21, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 1374, Sec. 5, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1297, Sec. 18, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 283, Sec. 12, eff. Sept. 1, 2003.

Sec. 53.012. REVIEW BY PROSECUTOR. (a) The prosecuting attorney shall promptly review the circumstances and allegations of a referral made under Section 53.01 for legal sufficiency and the desirability of prosecution and may file a petition without regard to whether probable cause was found under Section 53.01.

(b) If the prosecuting attorney does not file a petition requesting the adjudication of the child referred to the prosecuting attorney, the prosecuting attorney shall:

(1) terminate all proceedings, if the reason is for lack of probable cause; or

(2) return the referral to the juvenile probation department for further proceedings.

(c) The juvenile probation department shall promptly refer a child who has been returned to the department under Subsection (b)(2) and who fails or refuses to participate in a program of the department to the prosecuting attorney for review of the child's case and determination of whether to file a petition.

Added by Acts 1995, 74th Leg., ch. 262, Sec. 22, eff. Jan. 1, 1996.

Sec. 53.013. PROGRESSIVE SANCTIONS PROGRAM. Each juvenile board may adopt a progressive sanctions program using the model for progressive sanctions in Chapter 59.

Added by Acts 1995, 74th Leg., ch. 262, Sec. 22, eff. Jan. 1, 1996. Amended by Acts 1997, 75th Leg., ch. 1086, Sec. 7, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 479, Sec. 1, eff. Sept. 1, 2003.

Sec. 53.02. RELEASE FROM DETENTION. (a) If a child is brought before the court or delivered to a detention facility as authorized by Sections 51.12(a)(3) and (4), the intake or other authorized officer of the court shall immediately make an investigation and shall release the child unless it appears that his detention is warranted under Subsection (b). The release may be conditioned upon requirements reasonably necessary to insure the child's appearance at later proceedings, but the conditions of the release must be in writing and filed with the office or official designated by the court and a copy furnished to the child.

(b) A child taken into custody may be detained prior to hearing on the petition only if:

(1) the child is likely to abscond or be removed from the jurisdiction of the court;

(2) suitable supervision, care, or protection for the child is not being provided by a parent, guardian, custodian, or other person;

(3) the child has no parent, guardian, custodian, or other person able to return the child to the court when required;

(4) the child may be dangerous to himself or herself or the child may threaten the safety of the public if released;

(5) the child 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 an offense if released; or

(6) the child's detention is required under Subsection (f).

(c) If the child is not released, a request for detention hearing shall be made and promptly presented to the court, and an informal detention hearing as provided in Section 54.01 of this code shall be held promptly, but not later than the time required by Section 54.01 of this code.

(d) A release of a child to an adult under Subsection (a) must be conditioned on the agreement of the adult to be subject to the jurisdiction of the juvenile court and to an order of contempt by the court if the adult, after notification, is unable to produce the child at later proceedings.

(e) Unless otherwise agreed in the memorandum of understanding under Section 37.011, Education Code, in a county with a population greater than 125,000, if a child being released under this section is expelled under Section 37.007, Education Code, the release shall be conditioned on the child's attending a juvenile justice alternative education program pending a deferred prosecution or formal court disposition of the child's case.

(f) A child who is alleged to have engaged in delinquent conduct and to have used, possessed, or exhibited a firearm, as defined by Section 46.01, Penal Code, in the commission of the offense shall be detained until the child is released at the direction of the judge of the juvenile court, a substitute judge authorized by Section 51.04(f), or a referee appointed under Section 51.04(g), including an oral direction by telephone, or until a detention hearing is held as required by Section 54.01.

Acts 1973, 63rd Leg., p. 1460, ch. 544, Sec. 1, eff. Sept. 1, 1973. Amended by Acts 1979, 66th Leg., p. 1102, ch. 518, Sec. 1, eff. June 11, 1979; Acts 1981, 67th Leg., p. 291, ch. 115, Sec. 1, eff. Aug. 31, 1981; Acts 1995, 74th Leg., ch. 262, Sec. 23, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 1015, Sec. 17, eff. June 19, 1997; Acts 1997, 75th Leg., ch. 1374, Sec. 6, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 232, Sec. 1, eff. Sept. 1, 1999.

Sec. 53.03. DEFERRED PROSECUTION. (a) Subject to Subsections (e) and (g), if the preliminary investigation required by Section 53.01 of this code results in a determination that further proceedings in the case are authorized, the probation officer or other designated officer of the court, subject to the direction of the juvenile court, may advise the parties for a reasonable period of time not to exceed six months concerning deferred prosecution and rehabilitation of a child if:

(1) deferred prosecution would be in the interest of

the public and the child;

(2) the child and his parent, guardian, or custodian consent with knowledge that consent is not obligatory; and

(3) the child and his parent, guardian, or custodian are informed that they may terminate the deferred prosecution at any point and petition the court for a court hearing in the case.

(b) Except as otherwise permitted by this title, the child may not be detained during or as a result of the deferred prosecution process.

(c) An incriminating statement made by a participant to the person giving advice and in the discussions or conferences incident thereto may not be used against the declarant in any court hearing.

(d) The juvenile board may adopt a fee schedule for deferred prosecution services and rules for the waiver of a fee for financial hardship in accordance with guidelines that the Texas Juvenile Probation Commission shall provide. The maximum fee is \$15 a month. If the board adopts a schedule and rules for waiver, the probation officer or other designated officer of the court shall collect the fee authorized by the schedule from the parent, guardian, or custodian of a child for whom a deferred prosecution is authorized under this section or waive the fee in accordance with the rules adopted by the board. The officer shall deposit the fees received under this section in the county treasury to the credit of a special fund that may be used only for juvenile probation or community-based juvenile corrections services or facilities in which a juvenile may be required to live while under court supervision. If the board does not adopt a schedule and rules for waiver, a fee for deferred prosecution services may not be imposed.

(e) A prosecuting attorney may defer prosecution for any child. A probation officer or other designated officer of the court:

(1) may not defer prosecution for a child for a case that is required to be forwarded to the prosecuting attorney under Section 53.01(d); and

(2) may defer prosecution for a child who has previously been adjudicated for conduct that constitutes a felony only if the prosecuting attorney consents in writing.

(f) The probation officer or other officer designated by the court supervising a program of deferred prosecution for a child under this section shall report to the juvenile court any violation by the child of the program.

(g) Prosecution may not be deferred for a child alleged to have engaged in conduct that:

(1) is an offense under Section 49.04, 49.05, 49.06, 49.07, or 49.08, Penal Code; or

(2) is a third or subsequent offense under Section 106.04 or 106.041, Alcoholic Beverage Code.

(h) If the child is alleged to have engaged in delinquent conduct or conduct indicating a need for supervision that violates Section 28.08, Penal Code, deferred prosecution under this section may include:

(1) voluntary attendance in a class with instruction in self-responsibility and empathy for a victim of an offense conducted by a local juvenile probation department, if the class is available; and

(2) voluntary restoration of the property damaged by the child by removing or painting over any markings made by the child, if the owner of the property consents to the restoration.

(i) The court may defer prosecution for a child at any time:

(1) for an adjudication that is to be decided by a jury trial, before the jury is sworn;

(2) for an adjudication before the court, before the first witness is sworn; or

(3) for an uncontested adjudication, before the child pleads to the petition or agrees to a stipulation of evidence.

(j) The court may add the period of deferred prosecution under Subsection (i) to a previous order of deferred prosecution, except that the court may not place the child on deferred prosecution for a combined period longer than one year.

(k) In deciding whether to grant deferred prosecution under Subsection (i), the court may consider professional representations by the parties concerning the nature of the case and the background of the respondent. The representations made under this subsection by the child or counsel for the child are not admissible against the child at trial should the court reject the

application for deferred prosecution.

Acts 1973, 63rd Leg., p. 1460, ch. 544, Sec. 1, eff. Sept. 1, 1973. Amended by Acts 1983, 68th Leg., p. 3261, ch. 565, Sec. 1, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 1040, Sec. 22, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 262, Sec. 24, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 593, Sec. 6, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1013, Sec. 16, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 19.01(17), eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 283, Sec. 13, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 949, Sec. 11, eff. Sept. 1, 2005.

Sec. 53.035. GRAND JURY REFERRAL. (a) The prosecuting attorney may, before filing a petition under Section 53.04, refer an offense to a grand jury in the county in which the offense is alleged to have been committed.

(b) The grand jury has the same jurisdiction and powers to investigate the facts and circumstances concerning an offense referred to the grand jury under this section as it has to investigate other criminal activity.

(c) If the grand jury votes to take no action on an offense referred to the grand jury under this section, the prosecuting attorney may not file a petition under Section 53.04 concerning the offense unless the same or a successor grand jury approves the filing of the petition.

(d) If the grand jury votes for approval of the prosecution of an offense referred to the grand jury under this section, the prosecuting attorney may file a petition under Section 53.04.

(e) The approval of the prosecution of an offense by a grand jury under this section does not constitute approval of a petition by a grand jury for purposes of Section 53.045.

Added by Acts 1999, 76th Leg., ch. 1477, Sec. 6, eff. Sept. 1, 1999.

Sec. 53.04. COURT PETITION; ANSWER. (a) If the preliminary investigation, required by Section 53.01 of this code results in a determination that further proceedings are authorized and warranted, a petition for an adjudication or transfer hearing of a child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision may be made as promptly as practicable by a prosecuting attorney who has knowledge of the facts alleged or is informed and believes that they are true.

(b) The proceedings shall be styled "In the matter of _____."

(c) The petition may be on information and belief.

(d) The petition must state:

(1) with reasonable particularity the time, place, and manner of the acts alleged and the penal law or standard of conduct allegedly violated by the acts;

(2) the name, age, and residence address, if known, of the child who is the subject of the petition;

(3) the names and residence addresses, if known, of the parent, guardian, or custodian of the child and of the child's spouse, if any;

(4) if the child's parent, guardian, or custodian does not reside or cannot be found in the state, or if their places of residence are unknown, the name and residence address of any known adult relative residing in the county or, if there is none, the name and residence address of the known adult relative residing nearest to the location of the court; and

(5) if the child is alleged to have engaged in habitual felony conduct, the previous adjudications in which the child was found to have engaged in conduct violating penal laws of the grade of felony.

(e) An oral or written answer to the petition may be made at or before the commencement of the hearing. If there is no answer, a general denial of the alleged conduct is assumed.

Acts 1973, 63rd Leg., p. 1460, ch. 544, Sec. 1, eff. Sept. 1, 1973. Amended by Acts 1995, 74th Leg., ch. 262, Sec. 25, eff. Jan. 1, 1996.

Sec. 53.045. VIOLENT OR HABITUAL OFFENDERS. (a) Except as provided by Subsection (e), the prosecuting attorney may refer the petition to the grand jury of the county in which the court in which the petition is filed presides if the petition alleges that the child engaged in delinquent conduct that constitutes habitual felony conduct as described by Section 51.031 or that included the violation of any of the following provisions:

(1) Section 19.02, Penal Code (murder);

(2) Section 19.03, Penal Code (capital murder);

(3) Section 19.04, Penal Code (manslaughter);
(4) Section 20.04, Penal Code (aggravated kidnapping);
(5) Section 22.011, Penal Code (sexual assault) or Section 22.021, Penal Code (aggravated sexual assault);
(6) Section 22.02, Penal Code (aggravated assault);
(7) Section 29.03, Penal Code (aggravated robbery);
(8) Section 22.04, Penal Code (injury to a child, elderly individual, or disabled individual), if the offense is punishable as a felony, other than a state jail felony;
(9) Section 22.05(b), Penal Code (felony deadly conduct involving discharging a firearm);
(10) Subchapter D, Chapter 481, Health and Safety Code, if the conduct constitutes a felony of the first degree or an aggravated controlled substance felony (certain offenses involving controlled substances);
(11) Section 15.03, Penal Code (criminal solicitation);
(12) Section 21.11(a)(1), Penal Code (indecent with a child);
(13) Section 15.031, Penal Code (criminal solicitation of a minor);
(14) Section 15.01, Penal Code (criminal attempt), if the offense attempted was an offense under Section 19.02, Penal Code (murder), or Section 19.03, Penal Code (capital murder), or an offense listed by Section 3g(a)(1), Article 42.12, Code of Criminal Procedure;
(15) Section 28.02, Penal Code (arson), if bodily injury or death is suffered by any person by reason of the commission of the conduct; or
(16) Section 49.08, Penal Code (intoxication manslaughter).

(b) A grand jury may approve a petition submitted to it under this section by a vote of nine members of the grand jury in the same manner that the grand jury votes on the presentment of an indictment.

(c) The grand jury has all the powers to investigate the facts and circumstances relating to a petition submitted under this section as it has to investigate other criminal activity but may not issue an indictment unless the child is transferred to a criminal court as provided by Section 54.02 of this code.

(d) If the grand jury approves of the petition, the fact of approval shall be certified to the juvenile court, and the certification shall be entered in the record of the case. For the purpose of the transfer of a child to the Texas Department of Corrections as provided by Section 61.084(c), Human Resources Code, a juvenile court petition approved by a grand jury under this section is an indictment presented by the grand jury.

(e) The prosecuting attorney may not refer a petition that alleges the child engaged in conduct that violated Section 22.011(a)(2), Penal Code, or Sections 22.021(a)(1)(B) and (2)(B), Penal Code, unless the child is more than three years older than the victim of the conduct.

Added by Acts 1987, 70th Leg., ch. 385, Sec. 7, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 574, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 262, Sec. 26, 27, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 1086, Sec. 8, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1297, Sec. 19, eff. Sept. 1, 2001.

Sec. 53.05. TIME SET FOR HEARING. (a) After the petition has been filed, the juvenile court shall set a time for the hearing.

(b) The time set for the hearing shall not be later than 10 working days after the day the petition was filed if:

(1) the child is in detention; or
(2) the child will be taken into custody under Section 53.06(d) of this code.

Acts 1973, 63rd Leg., p. 1460, ch. 544, Sec. 1, eff. Sept. 1, 1973. Amended by Acts 1995, 74th Leg., ch. 262, Sec. 28, eff. Jan. 1, 1996.

Sec. 53.06. SUMMONS. (a) The juvenile court shall direct issuance of a summons to:

(1) the child named in the petition;
(2) the child's parent, guardian, or custodian;
(3) the child's guardian ad litem; and
(4) any other person who appears to the court to be a proper or necessary party to the proceeding.

(b) The summons must require the persons served to appear before the court at the time set to answer the allegations of the petition. A copy of the petition must accompany the summons.

(c) The court may endorse on the summons an order directing the person having the physical custody or control of the child to bring the child to the hearing. A person who violates an order entered under this subsection may be proceeded against under Section 53.08 or 54.07 of this code.

(d) If it appears from an affidavit filed or from sworn testimony before the court that immediate detention of the child is warranted under Section 53.02(b) of this code, the court may endorse on the summons an order that a law-enforcement officer shall serve the summons and shall immediately take the child into custody and bring him before the court.

(e) A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

Acts 1973, 63rd Leg., p. 1460, ch. 544, Sec. 1, eff. Sept. 1, 1973. Amended by Acts 1995, 74th Leg., ch. 262, Sec. 29, eff. Jan. 1, 1996.

Sec. 53.07. SERVICE OF SUMMONS. (a) If a person to be served with a summons is in this state and can be found, the summons shall be served upon him personally at least two days before the day of the adjudication hearing. If he is in this state and cannot be found, but his address is known or can with reasonable diligence be ascertained, the summons may be served on him by mailing a copy by registered or certified mail, return receipt requested, at least five days before the day of the hearing. If he is outside this state but he can be found or his address is known, or his whereabouts or address can with reasonable diligence be ascertained, service of the summons may be made either by delivering a copy to him personally or mailing a copy to him by registered or certified mail, return receipt requested, at least five days before the day of the hearing.

(b) The juvenile court has jurisdiction of the case if after reasonable effort a person other than the child cannot be found nor his post-office address ascertained, whether he is in or outside this state.

(c) Service of the summons may be made by any suitable person under the direction of the court.

(d) The court may authorize payment from the general funds of the county of the costs of service and of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

(e) Witnesses may be subpoenaed in accordance with the Texas Code of Criminal Procedure, 1965.

Acts 1973, 63rd Leg., p. 1460, ch. 544, Sec. 1, eff. Sept. 1, 1973.

Sec. 53.08. WRIT OF ATTACHMENT. (a) The juvenile court may issue a writ of attachment for a person who violates an order entered under Section 53.06(c).

(b) A writ of attachment issued under this section is executed in the same manner as in a criminal proceeding as provided by Chapter 24, Code of Criminal Procedure.

Added by Acts 1995, 74th Leg., ch. 262, Sec. 30, eff. Jan. 1, 1996.