

# Nuts and Bolts

## Procedural Laws of Juvenile Adjudication

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- 82<sup>nd</sup> Legislature in 2011
- Governing bodies must adopt “reasonable rules” for JCMs. (SB 61, amending Code of Criminal Procedure art. 45.056)
- Rules must provide, among other things, for training in “applicable procedural and substantive law.” See Article 45.056(f)

## What are Substantive Laws?

- Define rights people have
- Outline duties people must perform
- Govern conduct:
  - acts and omissions
  - the obligation to do something or refrain from doing something
- Often will contain key words:
  - “A person commits an offense if . . .”
  - “It is an offense to . . .”
  - “A person shall . . .”

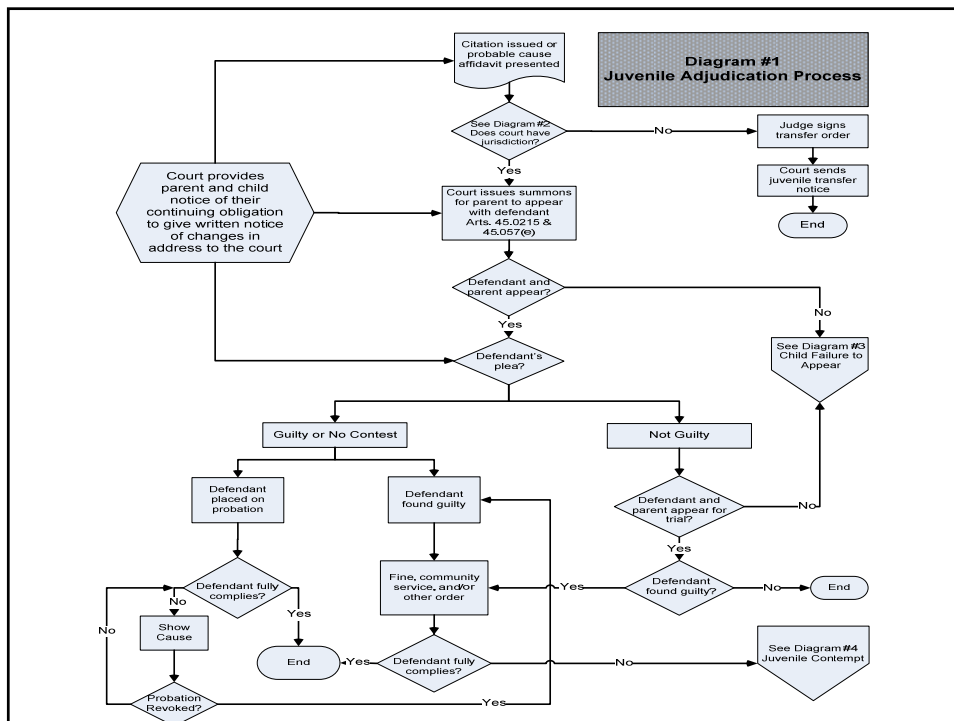
## What are Procedural Laws?

- The rules by which substantive laws are administered
- Timetables
- Deadlines
- Jurisdictional Authority
- Order of proceedings
- Sanctions

# The Juvenile Adjudication Process

## Who is a “juvenile”?

| Code/Statute               | Term and Definition                     |
|----------------------------|---|
| Family Code                | Child – 10 or older and under 17        |
| Code of Criminal Procedure | Child – 10 or older and under 17        |
| Transportation Code        | “Person” or Minor – Under 17            |
| Alcoholic Beverage Code    | Minor – Under 21                        |
| Health and Safety Code     | “Individual” or Minor – Under 18        |
| Failure to Attend School   | “Individual” – 12 or older and under 18 |



## The Juvenile Adjudication Process

### When to summons a parent

| If the defendant is aged . . . | and is charged with . . .  | Authority   |
|--------------------------------|--|---|
| 10 to 16                       | A fine only offense including an alcohol or tobacco offense        | Tex. Code Crim. Proc. art. 45.0215(a), (a-1) & 45.057(e)                                |
| 17 to 18                       | Electronic Transmission of Certain Visual Material Depicting Minor | Tex. Code Crim. Proc. art. 45.0215(a-1), (b)  |
| 12 to 18                       | Failure to Attend School   | Tex. Code Crim. Proc. art. 45.054(c);<br>Tex. Educ. Code § 25.085(b), (e);<br>25.094(a) |

## The Juvenile Adjudication Process

### Notice of Continuing Obligation to Appear

- Courts are required to give written notice to children and their parents of their obligation to keep the court informed of changes in the child's address.
- Failure to provide this notice has implications if the court must pursue the child for the violation after the child turns 17.
- Failure of the child or parent(s) to notify the court of changes in the child's address is a Class C misdemeanor.

## The Juvenile Adjudication Process

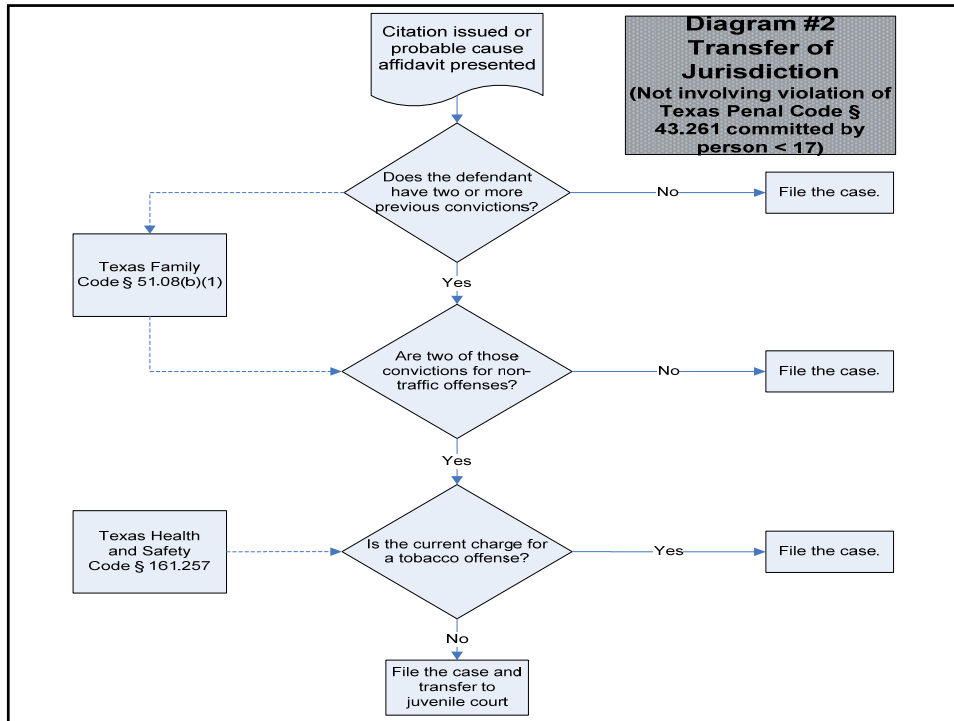
### Notice of Continuing Obligation to Appear

- Provide the notice on the citation.
- Provide the notice with the summons.
- Provide the notice when the child comes to court.

## The Juvenile Adjudication Process

### Mandatory Transfer to Juvenile Court

- The child is charged with a “sexting” offense under Texas Penal Code § 43.261.
- The child is charged with a non-traffic, non-tobacco offense and has two or more previous non-traffic, non-tobacco convictions.
- Courts implementing a juvenile case manager program may but are not required to transfer the case in the latter situation.



## The Juvenile Adjudication Process Sanctions

- Fine within the fine range.
- Community service in lieu of fine and costs.
- Tutoring program in lieu of fine, if the violation occurred at the defendant's school.
- Deferred disposition probation (with community service or tutoring program in lieu of costs and fee)

## The Juvenile Adjudication Process

### Optional Sanctions

- Applicable to children and parents even when the court adjudicates the defendant guilty.
- Article 45.057 dispositional orders for any fine only misdemeanor.
- Article 45.054 dispositional orders for Failure to Attend School violations.
- Any of these programs would be appropriate conditions of deferred disposition as well.

## The Juvenile Adjudication Process

### Optional Sanctions

- Article 45.054 dispositional orders may lead to a dismissal if the defendant complies with the order.
- Dismissal of Failure to Attend School charge may be required if defendant obtains high school diploma or GED.
- Dispositional orders are enforceable against the child by the juvenile contempt procedures discussed later.
- Dispositional orders are enforceable against the parent(s) by contempt.

## The Juvenile Adjudication Process

### Mandatory Sanctions – Alcohol Offenses



- Purchase
- Attempted Purchase
- Consumption
- Possession
- Misrepresentation of Age
- Driving or Boating under the influence (DUI or BUI)

## The Juvenile Adjudication Process

### Mandatory Sanctions – Alcohol Offenses

- Fine of up to \$500.00.
- Alcohol awareness program,
- Alcohol related community service
- Driver's license suspension.
- Whether and when these sanctions apply depends on whether the defendant has been previously convicted and/or is being placed on deferred disposition probation



| <b>Special Sanctions Applying to Alcohol Related Offenses (Excluding DUI and BUI)</b> |               |   |                          |                          |                                      |
|---|---------------|---|--------------------------|--------------------------|--------------------------------------|
|   | <b>Result</b> | <b>Previous Offense Results</b>               | <b>Community Service</b> | <b>Alcohol Awareness</b> | <b>Driving Privileges Suspension</b> |
| 1st Offense   | Conviction    | N/A   | 8-12 Hours               | Required                 | 30 days                              |
|   | Deferred      | N/A   | 8-12 Hours               | Required                 | None                                 |
| 2nd Offense   | Conviction    | 1 previous deferred                           | 20-40 Hours              | Required                 | 60 days                              |
|   | Conviction    | 1 previous conviction                         | 20-40 Hours              | Discretionary            | 60 days                              |
|   | Deferred      | 1 previous deferred                           | 20-40 Hours              | Required                 | None                                 |
| 3rd Offense   | Deferred      | 1 previous conviction                         | 20-40 Hours              | Required                 | None                                 |
|   | Conviction    | 2 previous deferreds                          | 20-40 Hours              | Required                 | 180 days                             |
|   | Conviction    | 1 previous conviction;<br>1 previous deferred | 20-40 Hours              | Discretionary            | 180 days                             |
|   | Conviction    | 2 previous convictions                        | 20-40 Hours              | Discretionary            | 180 days                             |
|   | Deferred      | 2 previous deferreds                          | 20-40 Hours              | Required                 | None                                 |
| 3rd Offense   | Deferred      | 1 previous conviction;<br>1 previous deferred | 20-40 Hours              | Required                 | None                                 |
|   | Deferred      | 2 previous convictions                        | 20-40 Hours              | Required                 | None                                 |

| <b>Special Sanctions Applying to Minor DUI or BUI Offenses</b> |               |   |                          |                          |
|--|---------------|---|--------------------------|--------------------------|
|  | <b>Result</b> | <b>Previous Offense Results</b>               | <b>Community Service</b> | <b>Alcohol Awareness</b> |
| 1 <sup>st</sup> Offense  | Conviction    | N/A   | 20-40 Hours              | Required                 |
|  | Deferred      | N/A   | None                     | Required                 |
| 2 <sup>nd</sup> Offense  | Conviction    | 1 previous deferred                           | 40-60 Hours              | Required                 |
|  | Conviction    | 1 previous conviction                         | 40-60 Hours              | Discretionary            |
|  | Deferred      | 1 previous deferred                           | None                     | Required                 |
|  | Deferred      | 1 previous conviction                         | None                     | Required                 |
| 3 <sup>rd</sup> Offense  | Conviction    | 2 previous deferreds                          | 40-60 Hours              | Required                 |
|  | Conviction    | 1 previous conviction;<br>1 previous deferred | 40-60 Hours              | Discretionary            |
|  | Conviction    | 2 previous convictions                        | 40-60 Hours              | Discretionary            |

## The Juvenile Adjudication Process

### Mandatory Sanctions – Tobacco Offenses



- Possession
- Purchase
- Consumption
- Acceptance
- Display Fake ID

## The Juvenile Adjudication Process

### Mandatory Sanctions – Tobacco Offenses

- Fine of up to \$250.00 – court costs collected but fine suspended
- Tobacco awareness program
- 8 – 12 hours of tobacco related community service if a tobacco awareness program is not readily available.
- 180 day DL suspension if defendant does not complete tobacco awareness program within 90 days.
- Dismissal of charge if defendant completes tobacco awareness program and has not committed a previous tobacco offense.

## The Juvenile Adjudication Process

### Uncertainties of Tobacco Adjudication Statute

- What happens if the defendant completes the tobacco awareness program late – collect fine and report conviction?
- Can the court instead place the defendant on deferred disposition probation?

## The Juvenile Adjudication Process

### Confidential Records

- All records (including electronic records) pertaining to a child who has been convicted of or satisfied a judgment for a fine-only misdemeanor other than a traffic offense are confidential and may not be disclosed to the public
- These records are open to inspection by:
  - Judges and court staff;
  - Criminal justice agency for a criminal justice purpose
  - TxDPS
  - Attorney for a party to the proceeding;
  - The child defendant
  - Defendant's parent, guardian, or managing conservator

## The Juvenile Adjudication Process Expunctions

- Expunge means “to eliminate completely; annihilate.”
- For certain offenses, a child has the right to obtain an expunction of a conviction through the municipal court.
- For some of these offenses, the court has an affirmative duty to notify the child of their rights.
- The rights are different from defendants’ right to an expunction in Chapter 55 of the Code of Criminal Procedure

## The Juvenile Adjudication Process Expunctions – Alcohol Convictions

- Expunction available if:
  - Person applies for an expunction
  - Person is 21 years old or older
  - Alcohol conviction was the only alcohol conviction the person had
- Court must collect a \$30.00 fee.
- Court has no duty to inform minors charged with alcohol violations of their right to seek an expunction.

## The Juvenile Adjudication Process

### Expunctions – Tobacco Convictions

- Expunction available if the person completes a tobacco awareness program.
- Court must collect a \$30.00 fee.
- Court has no duty to inform minors charged with tobacco violations of their right to seek an expunction.

## The Juvenile Adjudication Process

### Expunctions – Tobacco Convictions

- Expunction available if the person completes a tobacco awareness program.
- Court must collect a \$30.00 fee.
- No requirement to wait until 18<sup>th</sup> birthday.
- Multiple expunctions possible.
- Court has no duty to inform minors charged with tobacco violations of their right to seek an expunction.

## The Juvenile Adjudication Process

### Expunctions – Tobacco Convictions

- If the defendant completed the tobacco awareness program, the case would be dismissed and an expunction would not be possible.
- Does the statute contemplate expunging the case that was dismissed?

OR

- Is the expunction only available to defendants that do not timely complete the tobacco awareness program to obtain a dismissal, but later complete the tobacco awareness program to obtain an expunction?

## The Juvenile Adjudication Process

### Expunctions – Failure to Attend School

- Expunction available if:
  - Person applies for an expunction
  - Person is 18 years old or older
  - Conviction was the only Failure to Attend School conviction the person had
- Expunction available, without regard to whether the person has a previous conviction, if the person complies with a dispositional order under Article 45.054.
- Expunction available if the person presents a high school diploma or high school equivalency certificate before his or her 21<sup>st</sup> birthday
- Court must collect a \$30.00 fee.
- Court has a duty to inform minors charged with Failure to Attend School at the beginning of the proceedings and in open court of their right to seek an expunction.

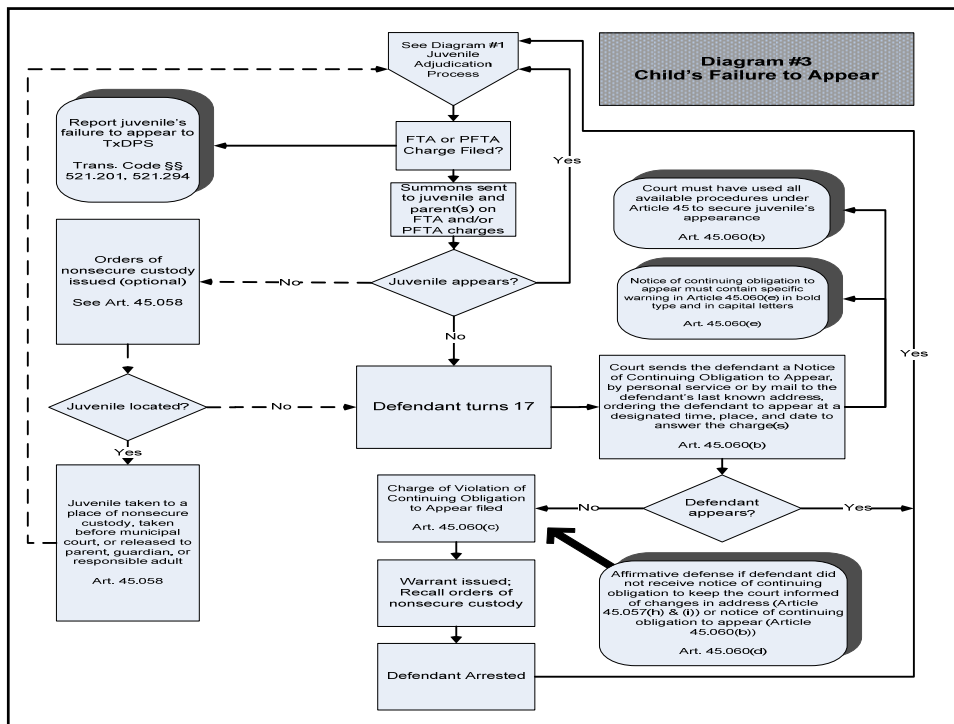
# The Juvenile Adjudication Process

## Expunctions – Other Nontraffic, Fine-Only Misdemeanors

- Expunction available if:
  - Person applies for an expunction
  - Person is 17 years old or older
  - Conviction was the only non-traffic, fine-only misdemeanor the person had before turning 17 years old
- Expunction available if:
  - Person applies for an expunction
  - Person is under 17 years old
  - Person had nontraffic, fine only misdemeanor dismissed after completing deferred disposition probation
  - Can apply for multiple dismissals
- Court must collect a \$30.00 fee.
- Court has a duty to inform children charged with nontraffic, fine-only misdemeanors at the beginning of the proceedings and in open court of their right to seek an expunction.

## Parents and Children Nonappearance

- Adult Nonappearance: FTA or VPTA and warrant for arrest.
- A warrant cannot be issued for the arrest of a child.
- FTA and VPTA may not be appropriate to file against children.
- Three sets of remedies:
  - Remedies against parents
  - Remedies when the child is under 17
  - Remedies when the child turns 17



## Parents and Children Nonappearance Remedies for Parents

- Parental FTA: A parent / guardian commits an offense if he or she receives notice requiring his or her attendance at a hearing involving his or her child and does not appear.
- Fine of up to \$500.00.
- Challenges:
  - Finding the parent / guardian's information (name, DOB, etc.)
  - Making sure they receive notice of the hearing



## Parents and Children Nonappearance Remedies for Children < 17 YOA

- FTA/VPTA
  - Notifications on citation may negate the elements of these offenses.
  - Child may not be “in custody” when a child is issued a citation
- Report Child to TxDPS for suspension of driving privileges
- Issue an Order of Nonsecure Custody to have the child taken to a place of nonsecure custody (see Texas Code of Criminal Procedure articles 45.058 & 45.059)

## Parents and Children Nonappearance Remedies for Children who turn 17 YOA

- Notice of Continuing Obligation to Appear
- Cannot issue if court failed to provide written notice of obligation to keep the court informed of changes in address when the defendant was a juvenile.
- If defendant does not appear in response to the notice, file Violation of Continuing Obligation to Appear.
- Rescind any outstanding Orders of Nonsecure Custody, and issue warrant on this charge, which occurred after the defendant was 17 years of age.

## Juvenile Contempt Procedures

- What happens when child is adjudicated guilty and fails to pay a fine, perform community, or comply with another court order?
- Show cause hearing – notice and opportunity to be heard.
- Can be held before or after the child turns 17 years of age.
- Hearing can be held even if child (and parents if under 17 years of age) does not appear.

## Juvenile Contempt Procedures

After a show cause hearing, the court has three options:

1. Do not hold child in contempt (e.g., give more time to comply with the court's order);
2. If the defendant is still under 17 years of age, find sufficient basis to hold child in contempt and refer the case to the juvenile court; or
3. Find the defendant in contempt and:
  - Fine the defendant up to \$500.00;
  - Suspend the defendant's driving privileges; or
  - Both

# Juvenile Contempt Procedures

When the defendant turns 17 years old, the court can issue a *capias pro fine* if the court:

1. Has found the defendant in contempt; and
2. Has found issuance of a *capias pro fine* is justified after considering:
  - The defendant's sophistication and maturity;
  - The defendant's criminal record and history; and
  - The reasonable likelihood of bringing about the judgment through procedures and services currently available to the court

