

Transfer of Juvenile Cases

Learning Objectives

- 1) Identify Statutory Authority for transferring Juvenile Cases from Municipal Court to Juvenile Court
- 2) Distinguish between Mandatory and Discretionary Transfer of Juvenile Cases
- 3) Describe the Process for Transferring a Case to the Juvenile Court

Statutory Authority

- Texas Family Code (TFC), Section 51.08 – Transfer from Criminal Court
- TFC, Section 51.02 (2) – Definition of a “Child”
- TFC, Section 51.08 (b) – “Shall” waive jurisdiction if:
 - (b)(1)(A) “Sexting” case under Texas Penal Code, Section 43.261; or
 - (b)(1)(B)(i) Two or more fine only misdemeanors;
 - (b)(1)(B)(ii) Two or more penal ordinance violations; or
 - (b)(1)(B)(iii) Combination

NO TRAFFIC OFFENSES MAY BE TRANSFERRED

- TFC, Section 51.03 – Delinquent Conduct; Conduct Indicating a Need for Supervision (CINS)

Mandatory vs. Discretionary Transfer

- Mandatory transfer of child previously **convicted** of two or more fine only offenses (see TFC, Sec. 51.08 (b)(1)(B)) Exception: Courts with Juvenile Case Manager may choose whether to transfer (TFC, Sec. 51.08(d))
- Mandatory transfer of sexting cases under Penal Code, (see Penal Code, Sec.43.261) NO JUVENILE CASE MANAGER EXCEPTION FOR THIS TYPE OF OFFENSE
- Discretionary transfer of offenses (other than traffic) – No or only one previous non-traffic conviction at courts’ discretion (see TFC, Sec. 51.08 (b)(2))

Process for Transferring Case to Juvenile Court

- Decide procedure for review of juvenile cases and how to present to Judge
- File report to Juvenile Court (required by TFC, Section 51.08© with Waiver of Jurisdiction and Transfer to Juvenile Court (both forms can be found in TMCEC2011 Forms Book/XV.Juveniles/General Forms)
- Include copy of complaint/citation and other papers, documents, transcripts of testimony related to the case
- Make appropriate docket/computer entries indicating transfer

Transfer of Failure to Attend School Cases (FTAS)

- Juvenile Court may not refuse mandatory transfer of a FTAS case if prosecuting attorney determines legal sufficiency for adjudication in Juvenile Court.
- Juvenile may transfer truancy cases, case by case or as a class if municipal court accepts
 - May transfer up to one year as a class
 - Complaint would be filed as criminal FTAS, not civil truancy

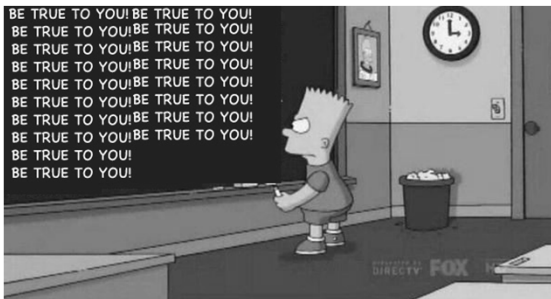
MANAGING JUVENILE CASES:

Mandatory and Discretionary Transfer of Juvenile Cases

Have you had these juveniles in your court?



How Did We Get From Here...



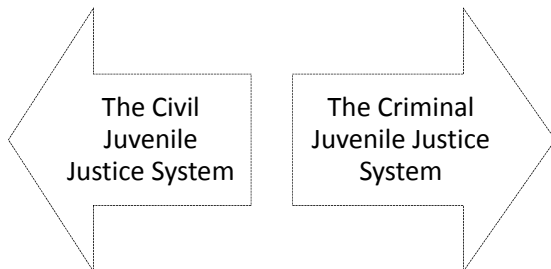
To Here?



Learning Objectives

- Identify Statutory Authority for Transferring Cases to Juvenile Court;
- Distinguish Mandatory vs. Discretionary transfers;
- Describe Process for Transferring

Two Juvenile Justice Systems



Texas' Shadow Courts

156,263	29,370	887	226
Class C Misdemeanor	Delinquent Conduct	CINS	Cert. Felony

does not include:


- Traffic offenses
- All JP case filings!

Criminal
 Civil

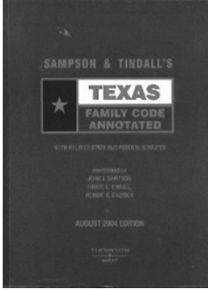
This Raises a Burning Question:

Must

a Municipal
Court Hear
Every Class C
Misdemeanor
Involving a
Child?



The Answer...



Lies in Section 51.08
of the Family Code –
Transfer from
Criminal Court

To Transfer, the Defendant Must Be A "Child"



- **Section 51.08(a), Family Code**
- **Section 51.02(2) defines a "child"**
Means a person who is 10 years of age or older and under 17 years of age at time of offense

Types of Offenses Subject to Transfer to Juvenile Court



- **General Rule - 51.08(a): Most criminal offenses filed against a child are to be transferred to Juvenile Court**
- **Exceptions:**
 - Perjury;
 - Traffic offense;
 - Fine only misdemeanor;
 - Penal ordinance violation

Mandatory Transfer to Juvenile Court of a Child Previously **Convicted**



- **Two or More Misdemeanors**
 - punishable by fine only
 - other than a traffic offense
- **Two or More Violations of a Penal Ordinance**
 - other than a traffic offense
- **One or More of Each of the Types of Misdemeanors Above**
 - Huh? A tad redundant...
- **Remember:**
 - Do NOT count DSC, deferred, or teen court...they are not "convictions"



Exception to Mandatory Transfer

- **A court with a Juvenile Case Manager under Article 45.056, Code of Criminal Procedure, is not subject to mandatory transfer**

Why Transfer if you have a JCM?

Discretionary Transfer Of Offenses By A Child to Juvenile Court

- **No Previous Fine-Only Convictions**
 - other than
 - a traffic offense
- **One Fine-Only Conviction**
 - other than
 - a traffic offense
- **Or anytime at courts' discretion (unless it is a traffic offense)**

Related Issue: What About Sexting Cases
(43.261 PC)?

- **Juvenile Case Manager exception does not apply to complaints alleging a sexting case against a child**



Must ALWAYS transfer a sexting case against a child
Thus, municipal court will only hear sexting case against 17-year-olds

Related Issue: What About Minor in Possession of Tobacco (161.252 HSC)?

- **Section 161.257 of the Health and Safety Code:**
“Title 3 of the Family Code, does not apply to a proceeding under this subchapter.”



Does this prohibit transferring to Juvenile Court?

Transfer of Failure to Attend School

Juvenile Court may not refuse mandatory transfer of a FTAS case if prosecuting attorney determines case is legally sufficient for adjudication in juvenile court

Let's summarize



- If court has a juvenile case manager, must transfer:
 - Sexting cases
- If court does not have a juvenile case manager, must transfer:
 - What could be third conviction, other than traffic or tobacco
 - Sexting cases
- Can always transfer anything but:
 - Traffic cases
 - Tobacco cases

More Questions? See 51.08(a)



- **When a case is transferred, what documents must the transferring court send to the juvenile court?**

...the court exercising criminal jurisdiction shall transfer the case to the juvenile court, together with a copy of the accusatory pleading and other papers, documents, and transcripts of testimony relating to the case...

More Questions? See 51.08(a)



- **What about the child? Must the child be taken into custody pending action by the juvenile court?**

...the court shall order that the child be taken to the place of detention designated by the juvenile court, or shall release the child to the custody of the child's parent, guardian, or custodian, to be brought before the juvenile court at a time designated by that court.



Discussion Questions

What sources of information may a judge ethically consider in deciding whether to transfer a juvenile case?
Are any sources ethically questionable?



Discussion Questions

Under what kind of circumstances should a municipal court make a discretionary transfer?



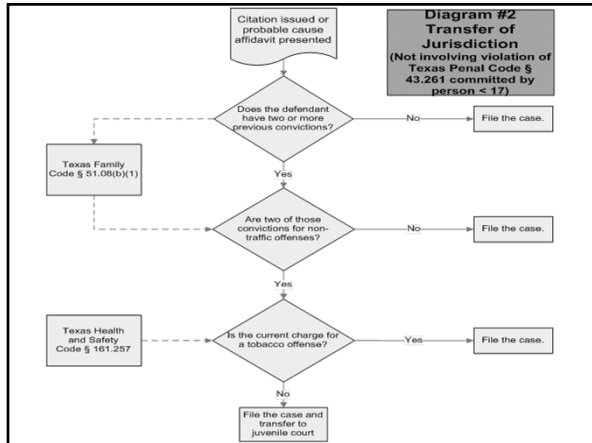
Discussion Questions

What is the clerk's role in the transfer of juvenile cases?

Who is your juvenile court contact?

Austin and Surrounding Areas

Burnet County
Travis County
Williamson County
Bastrop County
Caldwell County
Hays County
Blanco County



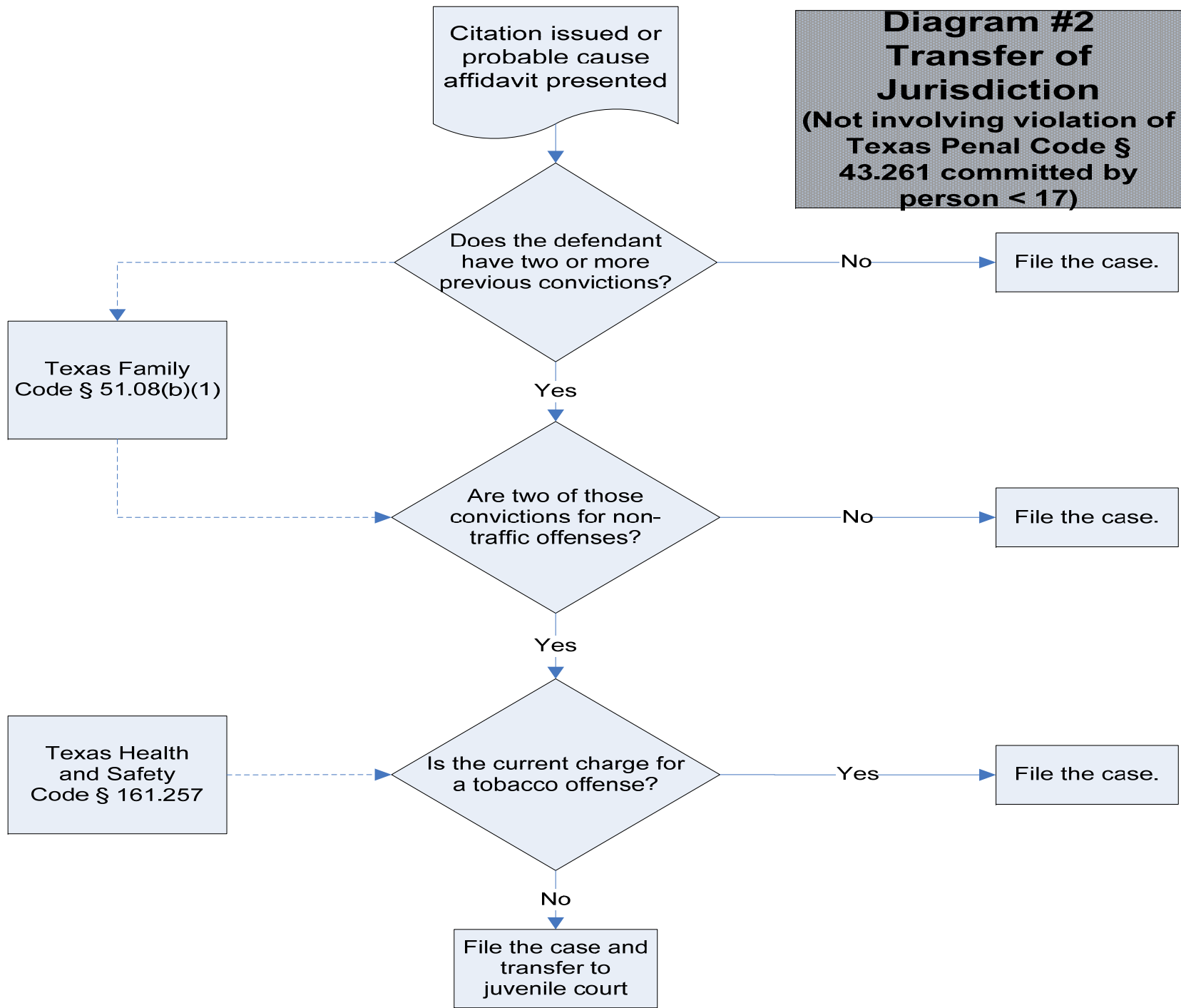
Thanks for Your Attention

Questions or Comments?

Contact: Shelai Mullins
972-547-7642



Diagram #2
Transfer of
Jurisdiction
(Not involving violation of
Texas Penal Code §
43.261 committed by
person < 17)



Transfer of Juvenile Cases from Municipal to Juvenile Court

Case filed in municipal court



start

First question:
Is the case a sexting offense against a child?

MUST waive jurisdiction and TRANSFER case to juvenile court end

YES

NO

Third question:
Does court have a juvenile case manager?

← YES

Second question:
Does juvenile have 2+ prior (non-traffic) convictions?

YES

NO

No mandatory transfer

MUST waive jurisdiction and TRANSFER case to juvenile court end

NO

Final question:
Should non-traffic case be transferred?

YES

NO

Waive jurisdiction and TRANSFER case to juvenile court

Retain jurisdiction of case and proceed

• Send case documents to juvenile court end

*Notify juvenile court of case end

Texas Family Code

Sec. 51.08. TRANSFER FROM CRIMINAL COURT.

(a) If the defendant in a criminal proceeding is a child who is charged with an offense other than perjury, a traffic offense, a misdemeanor punishable by fine only, or a violation of a penal ordinance of a political subdivision, unless the child has been transferred to criminal court under Section 54.02, the court exercising criminal jurisdiction shall transfer the case to the juvenile court, together with a copy of the accusatory pleading and other papers, documents, and transcripts of testimony relating to the case, and shall order that the child be taken to the place of detention designated by the juvenile court, or shall release the child to the custody of the child's parent, guardian, or custodian, to be brought before the juvenile court at a time designated by that court.

(b) A court in which there is pending a complaint against a child alleging a violation of a misdemeanor offense punishable by fine only other than a traffic offense or a violation of a penal ordinance of a political subdivision other than a traffic offense:

(1) except as provided by Subsection (d), shall waive its original jurisdiction and refer the child to juvenile court if:

(A) the complaint pending against the child alleges a violation of a misdemeanor offense under Section 43.261, Penal Code, that is punishable by fine only; or

(B) the child has previously been convicted of:

(i) two or more misdemeanors punishable by fine only other than a traffic offense;

(ii) two or more violations of a penal ordinance of a political subdivision other than a traffic offense; or

(iii) one or more of each of the types of misdemeanors described in Subparagraph (i) or (ii); and

(2) may waive its original jurisdiction and refer the child to juvenile court if the child:

(A) has not previously been convicted of a misdemeanor punishable by fine only other than a traffic offense or a violation of a penal ordinance of a political subdivision other than a traffic offense; or

(B) has previously been convicted of fewer than two misdemeanors punishable by fine only other than a traffic offense or two violations of a penal ordinance of a political subdivision other than a traffic offense.

(c) A court in which there is pending a complaint against a child alleging a violation of a misdemeanor offense punishable by fine only other than a traffic offense or a violation of a penal ordinance of a political subdivision other than a traffic offense shall notify the juvenile court of the county in which the court is located of the pending complaint and shall furnish to the juvenile court a copy of the final disposition of any matter for which the court does not waive its original jurisdiction under Subsection (b).

(d) A court that has implemented a juvenile case manager program under Article 45.056, Code of Criminal Procedure, may, but is not required to, waive its original jurisdiction under Subsection (b) (1) (B).

(e) A juvenile court may not refuse to accept the transfer of a case brought under Section 25.094, Education Code, for a child described by Subsection (b) (1) if a prosecuting attorney for the court determines under Section 53.012 that the case is legally sufficient under Section 53.01 for adjudication in juvenile court.

Acts 1973, 63rd Leg., p. 1460, ch. 544, Sec. 1, eff. Sept. 1, 1973. Amended by Acts 1987, 70th Leg., ch. 1040, Sec. 21, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 1245, Sec. 2, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 169, Sec. 2, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1297, Sec. 6, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 283, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. [650](#), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. [311](#), Sec. 4, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. [1322](#), Sec. 16, eff. September 1, 2011.

REPORT TO JUVENILE COURT OF COMPLAINT FILED (Sec. 51.08(c), F.C.)

CAUSE NUMBER: _____

STATE OF TEXAS	§	IN THE MUNICIPAL COURT
VS.	§	CITY OF _____
_____	§	_____ COUNTY, TEXAS

- Offense alleged: _____
- Juvenile's birthdate: _____
- Complaint filed: _____, 20__
- Reported to Juvenile Court: _____, 20__
- Final Disposition entered: _____, 20__
- Reported to Juvenile Court: _____, 20__
- Certified Copy of Final Disposition Attached: _____, 20__

Signed and entered this ____ day of _____, 20__.

(municipal court seal)

 Judge, Municipal Court
 City of _____
 _____ County, Texas

Editor's Note: It is suggested that this form be in triplicate; the top copy would report to the Juvenile Court the filing of a complaint against a juvenile in Municipal Court and would record the docket number, the juvenile Defendant's name, birth date, and the offense alleged; the second copy would then accompany the copy of the final disposition to the Juvenile Court and the third copy would be retained in the Municipal Court's file to document that the required reports were made. This form would be used only in cases where the Municipal Court does not waive its jurisdiction.

WAIVER OF JURISDICTION AND TRANSFER TO JUVENILE COURT (Sec. 51.08(b), F.C.)

CAUSE NUMBER: _____

STATE OF TEXAS § IN THE MUNICIPAL COURT
VS. § CITY OF _____
_____ § _____ COUNTY, TEXAS

Defendant's Birth Date: _____

TO: Juvenile Court

Pursuant to Section 51.08, Family Code, the Municipal Court referenced above waives its jurisdiction in the case set out and transfers the case to the Juvenile Court named. The case was not transferred to the Municipal Court by the Juvenile Court, nor is it a case alleging a traffic violation. The case does allege an offense classified as a misdemeanor punishable by fine only or violation of city ordinance other than traffic.

The records of this Municipal Court show of this Defendant:

- No prior case filed
No prior conviction
One previous conviction
Two previous convictions

Docket Number: _____
Offense: _____
Punishment Assessed: _____
Final Disposition: _____

Docket Number: _____
Offense: _____
Punishment Assessed: _____
Final Disposition: _____

Check only what is applicable. Add as many prior convictions as your records show except traffic or tobacco offenses.

The following marked documents are enclosed to effect this waiver of Municipal Court jurisdiction and transfer of the case to the Juvenile Court.

- Citation
Complaint
Magistrate's Warning Certificate
Juvenile Confession/Voluntary Statement Warnings
Waiver of Rights by a Juvenile
Magistrate's Certification and Acknowledgment of Voluntary Statement of Juvenile

- Appearance Bond
Other: _____

Signed and entered this _____ day of _____, 20__.

(municipal court seal)

Judge, Municipal Court
City of _____
_____ County, Texas

Editor's Note: Check only those items that are available in a particular case. Not every case will have every item. In transferring the case, the Municipal Court should send all original papers to the Juvenile Court, but it should keep copies in its own case file.
A Municipal Court that implements a juvenile case manager under Article 45.054, C.C.P., may—but is not required to—waive its original jurisdiction, except in sexting cases against children. Sec. 51.08(b)(1), F.C.