

FAMILY CODE

TITLE 3: JUVENILE JUSTICE CODE

CHAPTER 51: GENERAL PROVISIONS

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§ 51.02. Definitions

In this title:

- (1) “Aggravated controlled substance felony” means an offense under Subchapter D, Chapter 481, Health and Safety Code,¹ that is punishable by:
 - (A) a minimum term of confinement that is longer than the minimum term of confinement for a felony of the first degree; or
 - (B) a maximum fine that is greater than the maximum fine for a felony of the first degree.
- (2) “Child” means a person who is:
 - (A) ten years of age or older and under 17 years of age; or
 - (B) seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.
- (3) “Custodian” means the adult with whom the child resides.
- (4) “Guardian” means the person who, under court order, is the guardian of the person of the child or the public or private agency with whom the child has been placed by a court.
- (5) “Judge” or “juvenile court judge” means the judge of a juvenile court.
- (6) “Juvenile court” means a court designated under Section 51.04 of this code to exercise jurisdiction over proceedings under this title.
- (7) “Law-enforcement officer” means a peace officer as defined by Article 2.12, Code of Criminal Procedure.
- (8) “Nonoffender” means a child who:
 - (A) is subject to jurisdiction of a court under abuse, dependency, or neglect statutes under Title 5² for reasons other than legally prohibited conduct of the child; or
 - (B) has been taken into custody and is being held solely for deportation out of the United States.
- (8-a) “Nonsecure correctional facility” means a facility described by Section 51.126
- (9) “Parent” means the mother or the father of a child, but does not include a parent whose parental rights have been terminated.
- (10) “Party” means the state, a child who is the subject of proceedings under this subtitle, or the child's parent, spouse, guardian, or guardian ad litem.
- (11) “Prosecuting attorney” means the county attorney, district attorney, or other attorney who regularly serves in a prosecutory capacity in a juvenile court.
- (12) “Referral to juvenile court” means the referral of a child or a child's case to the office or official, including an intake officer or probation officer, designated by the juvenile board to process children within the juvenile justice system.

(13) “Secure correctional facility” means any public or private residential facility, including an alcohol or other drug treatment facility, that:

(A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in the facility; and

(B) is used for the placement of any juvenile who has been adjudicated as having committed an offense, any nonoffender, or any other individual convicted of a criminal offense.

(14) “Secure detention facility” means any public or private residential facility that:

(A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in the facility; and

(B) is used for the temporary placement of any juvenile who is accused of having committed an offense, any nonoffender, or any other individual accused of having committed a criminal offense.

(15) “Status offender” means a child who is accused, adjudicated, or convicted for conduct that would not, under state law, be a crime if committed by an adult, including:

(A) truancy under Section 51.03(b)(2);

(B) running away from home under Section 51.03(b)(3);

(C) a fineable only offense under Section 51.03(b)(1) transferred to the juvenile court under Section 51.08(b), but only if the conduct constituting the offense would not have been criminal if engaged in by an adult;

(D) failure to attend school under Section 25.094, Education Code;

(E) a violation of standards of student conduct as described by Section 51.03(b)(5);

(F) a violation of a juvenile curfew ordinance or order;

(G) a violation of a provision of the Alcoholic Beverage Code applicable to minors only; or

(H) a violation of any other fineable only offense under Section 8.07(a)(4) or (5), Penal Code, but only if the conduct constituting the offense would not have been criminal if engaged in by an adult.

(16) “Traffic offense” means:

(A) a violation of a penal statute cognizable under Chapter 729, Transportation Code, except for conduct for which the person convicted may be sentenced to imprisonment or confinement in jail; or

(B) a violation of a motor vehicle traffic ordinance of an incorporated city or town in this state.

(17) “Valid court order” means a court order entered under Section 54.04 concerning a child adjudicated to have engaged in conduct indicating a need for supervision as a status offender.

HB 2862

§ 51.03. Delinquent Conduct; Conduct Indicating a Need for Supervision

(a) Delinquent conduct is:

(1) conduct, other than a traffic offense, that violates a penal law of this state or of the United States punishable by imprisonment or by confinement in jail;

(2) conduct that violates a lawful order of a court under circumstances that would constitute contempt of that court in:

- (A) a justice or municipal court; or
 - (B) a county court for conduct punishable only by a fine;
 - (3) conduct that violates Section 49.04, 49.05, 49.06, 49.07, or 49.08, Penal Code; or
 - (4) conduct that violates Section 106.041, Alcoholic Beverage Code, relating to driving under the influence of alcohol by a minor (third or subsequent offense).
- (b) Conduct indicating a need for supervision is:
- (1) subject to Subsection (f), conduct, other than a traffic offense, that violates:
 - (A) the penal laws of this state of the grade of misdemeanor that are punishable by fine only; or
 - (B) the penal ordinances of any political subdivision of this state;
 - (2) the absence of a child on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period from school;
 - (3) the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return;
 - (4) conduct prohibited by city ordinance or by state law involving the inhalation of the fumes or vapors of paint and other protective coatings or glue and other adhesives and the volatile chemicals itemized in Section 485.001, Health and Safety Code;
 - (5) an act that violates a school district's previously communicated written standards of student conduct for which the child has been expelled under Section 37.007(c), Education Code;
 - (6) conduct that violates a reasonable and lawful order of a court entered under Section 264.305;
 - (7) notwithstanding Subsection (a)(1), conduct described by Section 43.02(a)(1) or (2), Penal Code; or
 - (8) notwithstanding Subsection (a)(1), conduct that violates Section 43.261, Penal Code.
- (c) Nothing in this title prevents criminal proceedings against a child for perjury.
- (d) It is an affirmative defense to an allegation of conduct under Subsection (b)(2) that one or more of the absences required to be proven under that subsection have been excused by a school official or by the court or that one or more of the absences were involuntary, but only if there is an insufficient number of unexcused or voluntary absences remaining to constitute conduct under Subsection (b)(2). The burden is on the respondent to show by a preponderance of the evidence that the absence has been or should be excused or that the absence was involuntary. A decision by the court to excuse an absence for purposes of this subsection does not affect the ability of the school district to determine whether to excuse the absence for another purpose.
- (e) For the purposes of Subsection (b)(3), "child" does not include a person who is married, divorced, or widowed.
- (e-1) Notwithstanding any other law, for purposes of conduct described by Subsection (b)(2), "child" means a person who is:
- (1) 10 years of age or older;
 - (2) alleged or found to have engaged in the conduct as a result of acts committed before becoming 18 years of age; and
 - (3) required to attend school under Section 25.085, Education Code.
- (f) Except as provided by Subsection (g), conduct described under Subsection (b)(1) does not constitute conduct indicating a need for supervision unless the child has been referred to the juvenile court under Section 51.08(b).

(g) In a county with a population of less than 100,000, conduct described by Subsection (b)(1)(A) that violates Section 25.094, Education Code, is conduct indicating a need for supervision.

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SB 1093

§ 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.

(f) A court shall waive original jurisdiction for a complaint against a child alleging a violation of a misdemeanor offense punishable by fine only, other than a traffic offense, and refer the child to juvenile court if the court or another court has previously dismissed a complaint against the child under Section 8.08, Penal Code.

SB 393

§ 51.09. Waiver of Rights

Unless a contrary intent clearly appears elsewhere in this title, any right granted to a child by this title or by the constitution or laws of this state or the United States may be waived in proceedings under this title if:

- (1) the waiver is made by the child and the attorney for the child;
- (2) the child and the attorney waiving the right are informed of and understand the right and the possible consequences of waiving it;
- (3) the waiver is voluntary; and
- (4) the waiver is made in writing or in court proceedings that are recorded.

§ 51.095. Admissibility of a Statement of a Child

(a) Notwithstanding Section 51.09, the statement of a child is admissible in evidence in any future proceeding concerning the matter about which the statement was given if:

(1) the statement is made in writing under a circumstance described by Subsection (d) and:

(A) the statement shows that the child has at some time before the making of the statement received from a magistrate a warning that:

- (i) the child may remain silent and not make any statement at all and that any statement that the child makes may be used in evidence against the child;
- (ii) the child has the right to have an attorney present to advise the child either prior to any questioning or during the questioning;
- (iii) if the child is unable to employ an attorney, the child has the right to have an attorney appointed to counsel with the child before or during any interviews with peace officers or attorneys representing the state; and
- (iv) the child has the right to terminate the interview at any time;

(B) and:

- (i) the statement must be signed in the presence of a magistrate by the child with no law enforcement officer or prosecuting attorney present, except that a magistrate may require a bailiff or a law enforcement officer if a bailiff is not available to be present if the magistrate determines that the presence of the bailiff or law enforcement officer is necessary for the personal safety of the magistrate or other court personnel, provided that the bailiff or law enforcement officer may not carry a weapon in the presence of the child; and
- (ii) the magistrate must be fully convinced that the child understands the nature and contents of the statement and that the child is signing the same voluntarily, and if a statement is taken, the magistrate must sign a written statement verifying the foregoing requisites have been met;

(C) the child knowingly, intelligently, and voluntarily waives these rights before and during the making of the statement and signs the statement in the presence of a magistrate; and

(D) the magistrate certifies that the magistrate has examined the child independent of any law enforcement officer or prosecuting attorney, except as required to ensure the personal safety of the magistrate or other court personnel, and has determined that the child understands the nature and contents of the statement and has knowingly, intelligently, and voluntarily waived these rights;

(2) the statement is made orally and the child makes a statement of facts or circumstances that are found to be true and tend to establish the child's guilt, such as the finding of secreted or stolen property, or the instrument with which the child states the offense was committed;

(3) the statement was res gestae of the delinquent conduct or the conduct indicating a need for supervision or of the arrest;

(4) the statement is made:

(A) in open court at the child's adjudication hearing;

(B) before a grand jury considering a petition, under Section 53.045, that the child engaged in delinquent conduct; or

(C) at a preliminary hearing concerning the child held in compliance with this code, other than at a detention hearing under Section 54.01; or

(5) subject to Subsection (f), the statement is made orally under a circumstance described by Subsection (d) and the statement is recorded by an electronic recording device, including a device that records images, and:

(A) before making the statement, the child is given the warning described by Subdivision (1)(A) by a magistrate, the warning is a part of the recording, and the child knowingly, intelligently, and voluntarily waives each right stated in the warning;

(B) the recording device is capable of making an accurate recording, the operator of the device is competent to use the device, the recording is accurate, and the recording has not been altered;

(C) each voice on the recording is identified; and

(D) not later than the 20th day before the date of the proceeding, the attorney representing the child is given a complete and accurate copy of each recording of the child made under this subdivision.

(b) This section and Section 51.09 do not preclude the admission of a statement made by the child if:

(1) the statement does not stem from interrogation of the child under a circumstance described by Subsection (d); or

(2) without regard to whether the statement stems from interrogation of the child under a circumstance described by Subsection (d), the statement is:

(A) voluntary and has a bearing on the credibility of the child as a witness; or

(B) recorded by an electronic recording device, including a device that records images, and is obtained:

(i) in another state in compliance with the laws of that state or this state; or

(ii) by a federal law enforcement officer in this state or another state in compliance with the laws of the United States.

(c) An electronic recording of a child's statement made under Subsection (a)(5) or (b)(2)(B) shall be preserved until all juvenile or criminal matters relating to any conduct referred to in the statement are final, including the exhaustion of all appeals, or barred from prosecution.

(d) Subsections (a)(1) and (a)(5) apply to the statement of a child made:

- (1) while the child is in a detention facility or other place of confinement;
- (2) while the child is in the custody of an officer; or
- (3) during or after the interrogation of the child by an officer if the child is in the possession of the Department of Family and Protective Services and is suspected to have engaged in conduct that violates a penal law of this state.

(e) A juvenile law referee or master may perform the duties imposed on a magistrate under this section without the approval of the juvenile court if the juvenile board of the county in which the statement of the child is made has authorized a referee or master to perform the duties of a magistrate under this section.

(f) A magistrate who provides the warnings required by Subsection (a)(5) for a recorded statement may at the time the warnings are provided request by speaking on the recording that the officer return the child and the recording to the magistrate at the conclusion of the process of questioning. The magistrate may then view the recording with the child or have the child view the recording to enable the magistrate to determine whether the child's statements were given voluntarily. The magistrate's determination of voluntariness shall be reduced to writing and signed and dated by the magistrate. If a magistrate uses the procedure described by this subsection, a child's statement is not admissible unless the magistrate determines that the statement was given voluntarily.