

FAMILY CODE

TITLE 3. JUVENILE JUSTICE CODE

CHAPTER 53. PROCEEDINGS PRIOR TO JUDICIAL PROCEEDINGS

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§ 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).

§ 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.

§ 53.013. Progressive Sanctions Program

Each juvenile board may adopt a progressive sanctions program using the model for progressive sanctions in Chapter 59.

§ 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.

§ 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.