

Juvenile Magstration- The obligation to protect the rights of the juveniles and help them understand their rights.

WAIVER OF RIGHTS-

Section 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 an 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.

Exceptions-

1. **Waiver of attorney-**

51.10- Right to Assistance of Attorney

- (b) The child's right to representation by an attorney shall not be waived in:
- (1) A hearing to consider transfer to criminal court as required by Section 54.02;
 - (2) An adjudication hearing as required by Section 54.03;
 - (3) A disposition hearing as required by Section 54.04;
 - (4) A hearing prior to commitment to the Texas Juvenile Justice Department as modified disposition in accordance with Section 54.05(f); or
 - (5) Hearings required by Chapter 55.

*Note- A child can waive his right to an attorney in a detention hearing. However, such waiver can only be made by child and the attorney for the child, pursuant to Section 51.09.

2. **Service-** Child cannot waive personal service of the Petition for Adjudication 53.07 two days prior to hearing. (All other parties may waive service in writing or by appearance 53.069(e).)

Guardian ad Litem- If the parents are unable or unwilling to act in the child's best interest, the Court may appoint a Guardian ad Litem. Section 51.11. That person may be the child's Attorney ad Litem, another attorney, or an adult family member. The Court may not appoint a probation officer or other employee of the Juvenile Court.

Interpreters-

CCP38.30- Parties, including the child and the child's parents, are entitled to have an interpreter. The Court may appoint one on the motion of a party or on the Court's own motion.

STATEMENTS/CONFESSIONS-

51.095- Admissibility of Statement of a Child

Written Statements-

Child warned before statement by a magistrate that-

- (1) 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;
 - (2) The child has the right to have an attorney present to advise the child either prior to any questioning or during any questioning
 - (3) 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
 - (4) The child has the right to terminate the interview at any time.
- (These are the "Miranda Warnings", but unlike in adult criminal cases, it is not sufficient for a law enforcement officer to administer them.)

Afterwards, the statement must be signed in the presence of a magistrate by the child, with no law enforcement officer or prosecuting attorney present. The magistrate may have a bailiff or law enforcement officer present if deemed necessary for safety concerns, but the bailiff or law enforcement officer may not carry a weapon in the child's presence.

The magistrate must be convinced the child understands the rights and the contents of the statement and is making the statement voluntarily. The magistrate must certify the same in writing.

It is not required that the child understand possible consequences or punishments that might be imposed. If the magistrate chooses to make such statements, the magistrate must be certain the information is accurate.

Oral Statements-

The magistrate must give the same explanation of rights on the recording, and the child must acknowledge understanding and waiver of these rights. Each voice must be identified on the recording.

It is not required that the magistrate review the statement with the child afterwards; however the magistrate may make the request to do so, if such request is made on the recording at the time the warnings are administered. If the magistrate does review the statement with the child, the determination of voluntariness shall be reduced to writing, as in written statements.

Request for attorney-

If at any time, the child requests to speak to an attorney, questioning must stop immediately. If the child requests to speak to another individual (i.e. probation officer or parent), questioning may continue.

DETENTION HEARINGS

Informal review-The Court must make a probable cause finding within 48 hours of detention (not 48 working hours) Section 54.01 (o). The Court may make this finding based upon oral or written information from the juvenile probation department.

Hearing- Must be held within 2 working , or the next working day if child detained on Friday or Saturday (24 hours for status offenders)

Magistrate- Justice of the Peace or Municipal Court Judge may hear Detention Hearing if County Judge and alternate Juvenile Judge are both unavailable. Such unavailability shall be documented.

Attorney- 54.10(c) In order to comply with the time requirements, the Court can proceed without an attorney if one is not available. Reasons attorney is unavailable must be documented. Attorney must be appointed immediately after the hearing. That attorney is permitted to request the Court hold a new detention hearing after he is appointed.

Required Warnings- Prior to hearing, the Court must inform the child of his

- *Right to counsel (Section 54.01(b)),
- *Right to remain silent (Section 54.01(b)),
- *Statements made by this child in this detention hearing cannot be used against this child in any other hearing (Section 54.01(g)).

Determine Probable Cause- The Court is required to make a determination as to whether there is probable cause to believe the child engaged in delinquent conduct. In making this determination, the Court may hear testimony from probation officers and/or law enforcement officers. Hearsay is admissible.

Written materials to be considered by the Court- The Court may also consider written reports. Pursuant to Section 54.01(c), prior to the hearing, the Court shall provide the child's attorney with access to any written material to be reviewed by the Court during the detention hearing. If the Court intends to review any documentation, including the juvenile's court file, prior to or during the detention hearing (or any other type of hearing), the Court will need to provide the child's attorney with notice and access.

Findings- After a finding of probable cause, the Court shall order the child released from detention unless it finds one or more of the following criteria (Section 54.01(e))-

- (1) he is likely to abscond or be removed from the jurisdiction of the court;
- (2) suitable supervision, care, or protection for him is not being provided by a parent, guardian, custodian, or other person;
- (3) he has not parent, guardian, custodian, or other person able to return him to the court when required;
- (4) he may be dangerous to himself or may threaten the safety of the public if released; or

- (5) he 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.

Length of detention- On an initial detention hearing, the child shall not be detained for a period of time to exceed 10 working days.

Subsequent Hearings- On a subsequent detention hearing, the child shall not be detained for a period of time to exceed 10 working days or 15 working days in counties that do not have a certified detention facility in the county.

The Court does not need to make a new finding of probable cause; however the Court does need to make one of the five findings for the basis of continued detention.

Section 54.01(h) does allow for a subsequent detention hearing to be waived if the waiver complies with Section 51.09.

Interactive Video Recording- Detention Hearings may be conducted by interactive video recording if conditions in Section 54.012 are met.

Conditions of release- If the Court makes a finding of probable cause, but does not find one of the five criteria, the Court may release the child under a written court order containing conditions designed to ensure the child's return to court. Sections 54.01(f) and ®.

ADJUDICATION HEARINGS

Service- Personal service of the summons with the hearing setting and the Petition is required on parties two days prior to hearing. The child cannot waive service. The other parties may waive in writing or by appearance. This requirement is for initial Petition and setting only.

Warnings- Pursuant to 54.03(b), at the beginning of the adjudication hearing, the juvenile court judge shall explain to the child and his parent, guardian, or guardian ad litem:

- (1) the allegations made against the child;
- (2) the nature and possible consequences of the proceedings, including the law relating to the admissibility of the record of a juvenile court adjudication in criminal proceedings;
- (3) the child's privilege against self-incrimination;
- (4) the child's right to trial and to confrontation of witnesses;
- (5) the child's right to representation by an attorney if he is not already represented; and
- (6) the child's right to trial by jury.

**Judge must personally explain everything to the child-*

Asking the child if he knows what he is charged with and if he understands what is occurring is not sufficient. In the Matter of J.D.P., 691 S.W.2d 106 (Tex.App.- San Antonio 1985, no writ). The reading of the charge by the prosecutor is also not sufficient. In the Matter of K.L.C., 990 S.W.2d 242 (Tex. 1999). The child and his attorney also cannot orally waive the reading of the Petition. Such waiver does not comply with the requirements of Section 51.09. The Court must personally explain the charges and possible consequences of the hearing to the child, in language the child understands.

Appellate rights- Before accepting a plea or stipulation of evidence, the Court must explain the child's limited appellate rights, pursuant to Section 54.034.

[Victim's Rights- The Court is required prior to accepting any plea bargain if the victim has been notified of their rights pursuant to Chapter 56 of the Code of Criminal Procedure and Chapter 57 of the Family Code.]

DISPOSITION HEARINGS

Written material considered by the Court- *After adjudication*, the Court may review the court report/social histories prepared by the probation department. The Court must provide the child's attorney and the prosecuting attorney with access to all written material to be reviewed by the Court on or before the 2nd working day prior to the hearing. Section 5.04(h). IF the Court intends to review the juvenile's court file at any time before or during the hearing, notice and access will need to be provided to the child's attorney.

Findings-

All dispositions- In order for disposition to be made, the Court must find that the child is in need of rehabilitation or the protection of the child requires that disposition be made. Section 54.04(c).

Placement outside the home- For a disposition placing the child outside his home, the Court must find-

- (1) It is in the child's best interest to be placed outside the child's home;
- (2) Reasonable efforts were made to prevent or eliminate the need for the child's removal from the home and to make it possible for the child to return to the child's home; and
- (3) The child, in the child's home, cannot be provided the quality of care and level of support and supervisions that the child need to meet the conditions of probation.

Notification of rights- Pursuant to Section 54.04(h), at the conclusion of the hearing, the Court shall inform that child of:

- (1) The child's right to appeal, as required by Section 56.01; and
- (2) The procedures for sealing of the child's records under Section 58.003.

Parental Statements-

Written- The parent shall be provided a form on which to make a written statement, to be provided to the Court through the probation department to be considered with any other court reports and written materials to be considered. Section 61.104.

Oral- After the evidence is received, but prior to any arguments of counsel, the Court shall give a parent that is present an opportunity to address the Court. The parent is not required to take an oath and not subject to cross examination. Section 61.105.

Note- All referenced code sections are to the Texas Family Code, unless otherwise noted.

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