

Waiver of Jurisdiction and Discretionary Transfer to Criminal Court (Certification Hearings) Under 18 Years Old

BEFORE THE HEARING

- Child represented by an attorney – right cannot be waived. [Tex. Fam. Code § 51.10](#)
- Court retains jurisdiction under [Tex. Fam. Code § 51.0412](#) if:
 - Petition for transfer hearing was filed before the child's 18th birthday;
 - Proceeding is not completed before the child turns 18; and
 - Court finds that the prosecutor exercised due diligence to complete the proceeding.
- Summons properly issued and served and specifically states that purpose of hearing is to consider discretionary transfer to criminal court. [Tex. Fam. Code § 54.02\(b\)](#)
- Court must order and obtain a complete diagnostic study, social evaluation, and full investigation of the child, the child's circumstances, and circumstances of the alleged offense. [Tex. Fam. Code § 54.02\(d\)](#)

TIME CONSIDERATIONS

- If the child is in detention or will be taken into custody when served with the summons, hearing set no later than 10 working days after the day the petition was filed. [Tex. Fam. Code § 53.05](#)
- Attorney representing the child is entitled to 10 days to prepare for the hearing. [Tex. Fam. Code § 51.10\(h\)](#)
- At least 5 days before the hearing, the court must provide attorney for the child and prosecutor with access to all written materials the court will consider. [Tex. Fam. Code § 54.02\(e\)](#)

→ **Practice Tip:** State on the record that materials were provided timely.

SOURCES OF INFORMATION

[Tex. Fam. Code § 54.02\(e\)](#)

- The court may consider:
 - Written reports from probation officers, professional court employees, guardians ad litem appointed for dual status youth, professional consultants and witness testimony.

FACTORS COURT MUST CONSIDER

[Tex. Fam. Code § 54.02\(f\)](#)

- Whether the alleged offense was against person or property, with greater weight in favor of transfer given to offenses against the person;
- The sophistication and maturity of the child;
- The record and previous history of the child; and
- The prospects of adequate protection of the public and the likelihood of the rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court.

REQUIRED FINDINGS FOR CERTIFICATION

- Age and level of offense [Tex. Fam. Code § 54.02\(a\)\(2\)](#)
 - The child was 14 or older at the time of the alleged offense, and the offense is a capital felony, an aggravated controlled substance felony, or a first degree felony; or
 - The child was 15 or older at the time of the alleged offense, and the offense is any other felony.
 - No prior adjudication hearing concerning the offense. [Tex. Fam. Code § 54.02\(a\)\(2\)](#)
 - Probable Cause [Tex. Fam. Code § 54.02\(a\)\(3\)](#):
 - Child committed the alleged offense; and
 - Due to the seriousness of the alleged offense or background of the child;
 - The welfare of the community requires criminal proceedings.
 - **If certified:**
 - Court must issue a written order that includes the reasons for the waiver and findings of the court. [Tex. Fam. Code § 54.02\(h\)](#)
- **Practice Tip:** Make the written order detailed and include specific facts to support the reasons for the waiver.

- If the person is detained in a certified juvenile detention facility, the court must set or deny bond as in an adult criminal case. [Tex. Fam. Code § 54.02\(h-1\)](#)
- Juvenile board policy will dictate whether the person may be detained in a juvenile facility or an adult county facility. [Tex. Fam. Code § 54.02\(h\)](#) & [Tex. Hum. Res. Code § 152.0015](#)

Waiver of Jurisdiction and Discretionary Transfer to Criminal Court (Certification Hearings) 18 Years and Older

BEFORE THE HEARING

- Person represented by an attorney – right cannot be waived. [Tex. Fam. Code § 51.10](#)
- Petition and notice requirements met; summons properly served. [Tex. Fam. Code § 54.02\(k\)](#)
 - Summons must state that the hearing is for the purpose of considering waiver of jurisdiction and transfer to the appropriate district court.
 - Not required to provide notice to the person's parent, guardian, or guardian ad litem.
- If requested by the person's attorney at least 10 days before the hearing, the Court must order a physical or mental examination. [Tex. Fam. Code § 54.02\(l\)](#)

→ **Practice Tip:** This request may arise if mental health issue or intellectual disability is suspected.

CUSTODY

- If the person is detained, the court must hold a detention hearing, but the court must release the person unless it finds that the person:
 - Is likely to abscond or be removed from the jurisdiction of the court;
 - May be dangerous to himself or herself or may threaten the safety of the public if released; or
 - Previous finding of delinquent conduct or previous conviction for an offense punishable by a term of jail or prison and is likely to commit an offense if released. [Tex. Fam. Code § 54.02\(o\)](#)
- If not released, the court must order detention in either a certified juvenile detention facility or an appropriate adult county facility. [Tex. Fam. Code § 54.02\(p\)](#)
- If the person is detained in a certified juvenile detention facility, the person must be kept separate from children. [Tex. Fam. Code § 54.02\(q\)](#)
- If the person is held in an adult county facility, the court must set or deny bond, as in an adult criminal case. [Tex. Fam. Code § 54.02\(r\)](#)

TIME CONSIDERATIONS

- If the person is in custody, then the hearing must be set for no later than 10 working days after the day the petition was filed. [Tex. Fam. Code § 53.05](#)
- Attorney representing the person is entitled to 10 days to prepare for the hearing. [Tex. Fam. Code § 51.10\(h\)](#)

TIME CONSIDERATIONS

- If an examination was ordered, the results must be provided to the attorney for the person and the prosecutor at least 5 days before the hearing. [Tex. Fam. Code § 54.02\(l\)](#)

REQUIRED FINDINGS FOR CERTIFICATION

- The person is currently 18 or older;
- The person was:
 - 10 or older and under 17 at the time and the offense is a capital felony or murder;
 - 14 or older and under 17 at the time and the offense is an aggravated controlled substance felony or a first degree felony other than murder; or
 - 15 or older and under 17 at the time and the offense is any other felony;
- There was no adjudication concerning the alleged offense;
- By a preponderance of the evidence:
 - For a reason beyond the control of the State, it was not practicable to proceed in juvenile court before the person's 18th birthday; or
 - After due diligence it was not practicable for the State to proceed before the person's 18th birthday because:
 - the State did not have probable cause to proceed and new evidence has been found since the person's 18th birthday;
 - the person could not be found; or
 - a previous transfer order was reversed by an appellate court or set aside by a district court; AND
- There is probable cause to believe that the child committed the offense alleged. [Tex. Fam. Code § 54.02\(j\)](#)

→ **Practice Tip:** If the court does not grant certification, the case is dismissed, unless an adjudication petition was filed before the person's 18th birthday.

- **If certified:**
 - Court must issue a written order that includes the reasons for the waiver and findings of the court. [Tex. Fam. Code § 54.02\(h\)](#)
- **Practice Tip:** Make the written order detailed and include specific facts to support the reasons for the waiver.