

STATE BAR OF TEXAS JUVENILE LAW SECTION  
AND THE TEXAS JUVENILE PROBATION COMMISSION'S  
**NUTS AND BOLTS OF JUVENILE LAW**  
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## **AGE LIMITS IN THE JUVENILE JUSTICE SYSTEM**

A PRESENTATION BY  
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## AGE LIMITS IN THE JUVENILE JUSTICE SYSTEM

### ***What is a child?***

A child is defined in the Texas family Code section 51.02 (2) as a person who is 10 years of age or older and under the age of 17; or

17 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.

### ***Does the age statute apply retroactively?***

Juvenile court is a specific jurisdiction court. Jurisdiction attaches at the time the offense is committed; the statute does not apply retroactively.

### ***What if a child younger than 10 commits a criminal act?***

The Texas Family Code, section 264.302 directs TDPRS to provide services for child as young as 7 (The STAR program).

### ***How long does juvenile jurisdiction last?***

If a child is placed on juvenile probation for delinquency or CINS, probation automatically expires at the child's 18<sup>th</sup> birthday.

When a child is committed to the Texas Youth Commission (TYC), the commission retains jurisdiction until the youth reaches the age of 19. Texas Human Resources Code 61.001 (6) and 61.084, amended 2007.

### ***When can a child be tried as an adult?***

The minimum age for certification and transfer (C&T) of a child to adult court is 14 if the charge is a capital felony, a first-degree felony or an aggravated controlled substance felony. Age 15 is the minimum age for C&T for all other felonies.

The 1987 Determinate Sentencing statute allows children who commit crimes between the age of 10 but not yet 17 to be charged for one of the numerous offenses listed in the statute, and an adjudication for a determinate offense may result in a term that continues past the child's 19<sup>th</sup> birthday, when the child is transferred on to the adult criminal justice system. TFC 53.045

If the respondent is given probation for a determinate sentence offense that is set to continue past the child's 18<sup>th</sup> birthday the court shall hold a hearing to determine whether the child shall be transferred to an appropriate district court or be discharged from the sentence of probation. TFC 54.051.

If transferred the respondent shall serve the remainder of probation as an adult, subject to adult sanctions if facing a motion to revoke probation.

The juvenile Court retains jurisdiction over a child after age 18 when the purpose is to conduct a Release and Transfer hearing pursuant to TFC 51.0411. The Court's options are limited to either transfer to the adult system or release the child

### ***When does juvenile court retain jurisdiction for someone over the age of 18?***

When a petition has been filed prior to the 18<sup>th</sup> birthday; and the proceeding has not been completed before the child turns 18; and the court finds the state used due diligence in attempting to complete the proceeding. TFC 51.0412.

Also for Release and Transfer hearings under TFC 51.0411 mentioned above.

***How do you charge an adult who has committed a crime when (s)he was a juvenile?***

TFC 54.02(j-l) governs post 18 filings.

A C&T petition may be filed as long as the state can show that for reasons beyond the control of the state it was not practicable to proceed in juvenile court before the child's 18<sup>th</sup> birthday; or after due diligence of the state, it was not practicable to proceed in juvenile court before the child's 18<sup>th</sup> birthday because:

- ★ the state did not have probable cause to proceed and new evidence has been found since the person's 18<sup>th</sup> birthday;
- ★ the person could not be found;
- ★ a previous transfer order was reversed by an appellate court or set aside by a district court.

***What constitutes proof of age?***

Remember, Age = Venue.

The State is required to prove age of the child respondent by a preponderance of the evidence.

Methods of proving age include introducing a certified copy of a birth certificate. The State can also rely on the testimony of a parent, or even an out-of-court statement by the juvenile, such as a written confession, non-custodial statement or statements made to a doctor during an exam. Proof by judicial admission is another way in which a date of birth can be established.

The respondent, through counsel, must make timely objections to age or the claim is waived under TFC, section 51.042.

**References**

Texas Family Code, 2005 Ed.

Texas Juvenile Law, 6<sup>th</sup> Ed. 2004, Robert Dawson