

STATE BAR OF TEXAS JUVENILE LAW SECTION
AND THE TEXAS JUVENILE PROBATION COMMISSION'S
NUTS AND BOLTS OF JUVENILE LAW
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PETITION, SUMMONS AND SERVICE

A PRESENTATION BY
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Petition, Summons and Service in Juvenile Court

PETITION

What is a Petition? Generally, it is the document that identifies the parties and provides notice of the issues to be litigated.

There are two types of juvenile petitions:

(1) a petition for an adjudication hearing regarding a child alleged to have engaged in delinquent conduct (sometimes referred to as “delinquency”) or conduct indicating a need for supervision (sometimes referred to as “CINS”); and

(2) a petition for a transfer hearing for a child alleged to have engaged in delinquent conduct. See TFC Section 53.04 (note - all references to “TFC” are to Title 3 of the Texas Family Code, also known as the Juvenile Justice Code).

The adjudication petition is the most common and is the juvenile version of the charging document. The transfer petition is used only when the State is asking the Court to waive its jurisdiction and transfer the case to an adult criminal court for prosecution (see TFC Section 54.02 – Waiver of Jurisdiction and Discretionary Transfer to Criminal Court - commonly known as either “certification”, or “certifying” a child to stand trial as an adult).

Where can a Petition be filed? Per TFC Section 51.06, the appropriate venue for a juvenile proceeding is either:

- (1) the county in which the alleged offense occurred (delinquency or CINS), OR
- (2) the county in which the child resides at the time the petition is filed, but only if:
 - (a) the child was under probation supervision in that county at the time of the commission of the delinquency/CINS; OR
 - (b) it cannot be determined in which county the delinquency/CINS occurred; OR
 - (c) the county in which the child resides agrees to accept the case for prosecution, in writing, prior to the case being sent to the county of residence for prosecution.

Note: for offenses committed prior to September 1, 1999, it is either county of offense or county of residence REGARDLESS of (2)(a), (2)(b) or (2)(c) above.

Who can file the Petition? Per TFC Section 53.04(a), a petition may be filed by a prosecuting attorney who has knowledge of the facts alleged or who is informed of the facts alleged and believes that they are true.

A prosecuting attorney is defined in TFC Section 51.02(11) as the county attorney, district attorney, or other attorney who regularly serves in a prosecutory capacity in a juvenile court.

Since the petition may be based on information and belief (TFC Sections 53.04(a) and (c)), it need NOT be based on personal knowledge and need NOT be sworn to or supported by affidavit or sworn statement.

When must the Petition be filed? Generally, a petition must be filed as promptly as practicable (TFC Section 53.04(a)), and within the statute of limitations period (TFC Section 51.19).

Under TFC Section 51.19, you first look to the Code of Criminal Procedure to see if the offense is covered under Chapter 12; if it is, then follow the limitations in Chapter 12 (see below). If the offense is not covered by Chapter 12, then look to the source law creating the offense and see if a limitation period is given; if it is, then follow it. Otherwise the limitations period will be two years. For the purposes of computing a limitation period, a petition filed in juvenile court for a transfer or an adjudication hearing is equivalent to an indictment or information and is treated as presented when the petition is filed in the proper court.

Chapter 12 of the Code of Criminal Procedure provides, generally, as follows (remember, this is just a general summary – read Chapter 12):

No limitation - for murder, manslaughter, sexual assault under PC 22.011(a)(2), aggravated sexual assault under PC 22.021(a)(1)(B), sexual assault where DNA doesn't initially match the victim or any other readily ascertainable person, continuous sexual abuse of young child or children, indecency with a child, and leaving the scene of an accident involving death;

10 years from the date of the offense – for certain types of theft, forgery, injury to an elderly or disabled person (1st degree only), and sexual assault (as modified by subsections 1 and 5 – again, read them), and arson;

7 years from the date of the offense – misapplication of fiduciary duty, securing execution of document by deception, certain tax code violations, credit card or debit card abuse, false statement to obtain property or credit, fraudulent use or possession of identifying information, and money laundering;

5 years from the date of the offense – for theft, burglary, robbery, kidnapping, injury to elderly or disabled person (not punishable as a 1st degree), abandoning or endangering a child, and insurance fraud;

3 years from the date of the offense – for all other felonies; and

2 years from the date of the offense – for all misdemeanors.

In addition, if the investigation of the offense shows that the victim is younger than 17 years of age at the time the offense is committed, the S/L increases to 20 years from the 18th birthday of the victim of one of the following offenses:

- sexual performance by a child under Section 43.25, Penal Code;
- aggravated kidnapping under Section 20.04(a)(4), Penal Code, if the defendant committed the offense with the intent to violate or abuse the victim sexually; or
- burglary under Section 30.02, Penal Code, if the offense is punishable under Subsection (d) of that section and the defendant committed the offense with the intent to commit an offense described by Subdivision (1)(B) or (D) of this article or Paragraph (B) of this subdivision.

NOTE – The changes to the statutes of limitation that took effect on September 1, 2007 ONLY apply to offenses that were not already barred by limitations as of September 1, 2007. Remember this when dealing with older offenses.

Can detention status be affected by petition filing status?

Yes: there are special filing rules when a child is being held in custody.

As has been (or will be) covered elsewhere in this course, a child who is in custody does NOT have a right to bail or to a bond. Because of this, the Family Code provides in Section 54.01(p) that if the child has not been released under Section 53.02 (Detention Hearing), and if neither a petition (under TFC 53.04) nor a motion to modify (under TFC 54.05) has been filed, then the court SHALL order the child RELEASED from detention not later than:

the 30th working day after the initial detention hearing (for capital felonies, aggravated controlled substance felonies, and first degree felonies), or

the 15th working day after the initial detention hearing for all other offenses and violations of probation orders.

This is not strictly a statute of limitation issue because it does NOT preclude prosecution, but it does result in the release of the child in a relatively short period of time if a petition or motion to modify has not been filed.

Note: effective September 1, 2005, local juvenile boards may impose SHORTER deadlines regarding release than those provided in the Family Code.

Prosecutors beware: if you have a child in custody who you consider to be a danger to the community – file that case as soon as you are legally able.

Defense attorneys: pay close attention to these deadlines so that your client does not remain in detention any longer than required.

What are the prerequisites to filing a Petition?

All of the above, plus a preliminary investigation under TFC Section 53.01 must be made to determine whether: (1) the person referred to juvenile court is a child; and (2) there is probable cause to believe the person engaged in delinquent conduct or CINS conduct (or that the person is a nonoffender who has been taken into custody and is being held solely for deportation out of the United States). If it is determined that the person is not a child or there is no probable cause, then the person shall be immediately released.

A child is defined in TFC Section 51.02(2) as a person who is:

- (1) ten years of age or older and under 17 years of age; OR
- (2) seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or CINS conduct as a result of acts committed before becoming 17 years of age.

Probable cause essentially means that there is a reasonable belief that the child engaged in delinquent conduct or CINS conduct based on the information provided.

What are the pleading requirements for a Petition?

Again, we go back to TFC Section 53.04 (a)-(d):

The proceedings should be styled “In the matter of _____.”

The petition must state:

- (1) with reasonable particularity the time, place, and the manner of the acts alleged and the penal law or standard of conduct allegedly violated by the acts;
- (2) the name, age, and residence address, if known, of the child who is the subject of the petition;
- (3) the names and residence addresses, if known, of the parent, guardian, or custodian of the child and of the child’s spouse, if any;
- (4) if the child’s parent, guardian, or custodian does not reside or can not be found in the state, or their places of residence are unknown, the name and residence address of any known adult relative residing in the county or, if there is none, the name and residence address of the known adult relative residing nearest to the location of the court; AND
- (5) if the child is alleged to have engaged in habitual felony conduct, the previous adjudications in which the child was found to have engaged in conduct violating penal laws of the grade of felony.

What is reasonable particularity with regard to time? Generally, time need not be specifically pled in a petition unless required to prove a time-sensitive violation, such as curfew.

What is reasonable particularity with regard to date of offense? The state is not bound by the date alleged in a juvenile petition. Pleading “on or about” is fine, subject to the rule that the act, as alleged, must have occurred prior to the date the petition was filed and within the applicable statute of limitations period. *In the Matter of G.M.P.*, 909 S.W.2d 198, 204 (Tex.App.-Houston [14th Dist.] 1995, no writ).

What is reasonable particularity with regard to place? The petition must, at a minimum, allege the county and state in which the alleged acts took place. *In the Matter of H.S., Jr.*, 564 S.W.2d 446, 447-448 (Tex.Civ.App.-Amarillo 1978, no writ). Note, however, that it may not be necessary to allege place in a motion to modify, depending on the particular probation condition violated, because some probation condition violations may be violations regardless of where they occurred. *J.J.H. v. State*, 557 S.W.2d 838, 839-840 (Tex.Civ.App.-Waco 1977, no writ).

What is reasonable particularity with regard to the manner of the acts alleged? For due process purposes the juvenile must be informed of the specific issues he is to meet. The petition does not need to allege the offense with the particularity of a criminal indictment; the charge needs to be only reasonable and definite. *In re B.P.H.*, 83 S.W.3d 400, 405 (Tex.App.-Fort Worth 2002, no pet.).

Pleading the elements of the offense. All elements of the alleged offense must be stated in the petition, otherwise the petition will be deemed fatally defective. *In the Matter of W.H.C.*, 580 S.W.2d 606, 608 (Tex.Civ.App.-Amarillo 1979, no writ). See also section on pleading the penal law, below.

Pleading the penal law or standard of conduct allegedly violated. While the Family Code says that the petition must state with reasonable particularity the penal law or standard of conduct allegedly violated by the acts, all that is required for the petition to be sufficient is that it must charge all the elements of the offense. *In the Matter of P.B.C.*, 538 S.W.2d 448, 451 (Tex.Civ.App.-El Paso 1976, no writ); *In the Matter of J.R.C.*, 551 S.W.2d 748, 754 (Tex.Civ.App.-Texarkana 1977, writ ref’d n.r.e.). Note, however, that pleading the proper penal law can repair a deficiency in pleading all of the elements of the offense if the penal law citation enables the child to discern each of the elements of the offense alleged. See *C.F. v.*

State, 897 S.W.2d 464, 471 (Tex.App.-El Paso 1995, no writ). It really comes down to notice and due process: the juvenile must be made aware of the specific issues he is to meet (so that he can prepare) and they must be set out with particularity. *Villarreal v. State*, 495 S.W.2d 28, 29 (Tex.Civ.App.-Corpus Christi 1973, no writ); *In re Gault*, 387 U.S. 1, 33 (1967). Also note, if the State cites the incorrect penal statute in the petition, the petition will not be invalidated as long as all the elements of the offense are charged. The error in pleading the penal law violated will be disregarded, and the juvenile will stand charged with the offense to which the elements were pled. *In the Matter of H.R.A.*, 790 S.W.2d 102, 105 (Tex.App.-Beaumont 1990, no writ).

Pleading the names and residence addresses of the parent, guardian, or custodian of the child and of the child's spouse, if any. It is not necessary to plead a parent whose parental rights have been terminated. Since "parent" is defined as a mother or father of the child, it is probably not necessary to plead both parents, although if their identities can be determined, both should be included. See TFC Section 51.02(9). If there is a parent AND a legal guardian, plead both. If there is a separate parent and legal guardian and custodian, plead all three. If the child is married, plead the spouse as well.

Law of Parties. It is NOT necessary to plead the law of parties. *In the Matter of S.D.W.*, 811 S.W.2d 739, 748 (Tex.App.-Houston [1st Dist.] 1991, no writ); *In the Matter of O.C.*, 945 S.W.2d 241, 244 (Tex.App.-San Antonio 1997, no writ). This rule is the same as for adults.

Prayer for Relief. The Family Code is silent on this one, so it is technically NOT required, although as a practical matter you should include one. Note that, in any event, you do NOT need to request restitution in your prayer for relief per TFC Section 54.048.

Amending the Petition. The strict prohibition against amending pleadings in criminal cases does not apply to juvenile proceedings. However, due process does require that the amendment to the petition must come at such a time and under such circumstances as to be basically fair to the juvenile. *Carrillo v. State*, 480 S.W.2d 612, 615 (Tex. 1972).

Joinder. Per TFC Section 51.17(a), the Texas Rules of Civil Procedure govern this issue. Joinder is addressed in TRCP Rules 51 and 174. The Family Code contemplates liberal joinder of offenses, so you can allege multiple offenses in one petition, but beware of potential due process violations in multi-offense allegations. The court will make a determination regarding joinder or severance on a case-by-case basis.

A Grand Jury indictment is NOT required in order to file a delinquency petition against a child which alleges a felony-level law violation. This is different from the adult criminal system which requires a Grand Jury indictment for all felonies. In juvenile court, however, the State can file a felony petition without any requirement of referral to and approval by a grand jury.

What are the two types of Grand Jury involvement regarding Petitions? They are: (1) Grand Jury Referral (commonly called a Grand Jury Advisory Opinion) under TFC Section 53.035; and, (2) Approval for Determinate Sentencing under the Violent or Habitual Offender statute found at TFC Section 53.045.

TFC Section 53.035 (Grand Jury Referral) provides that:

- (a) The prosecuting attorney may, before filing a petition under Section 53.04, refer an offense to a grand jury in the county in which the offense is alleged to have been committed.
- (b) The grand jury has the same jurisdiction and powers to investigate the facts and circumstances concerning an offense referred to the grand jury under this section as it has to investigate other criminal activity.
- (c) If the grand jury votes to take no action on an offense referred to the grand jury under this section, the prosecuting attorney may not file a petition under Section 53.04 concerning the offense unless the same or a successor grand jury approves the filing of the petition.

- (d) If the grand jury votes for approval of the prosecution of an offense referred to the grand jury under this section, the prosecuting attorney may file a petition under Section 53.04.
- (e) The approval of the prosecution of an offense by a grand jury under this section does not constitute approval of a petition by a grand jury for purposes of Section 53.045.

In short, this section says that PRIOR to filing a petition, the prosecuting attorney can present a case to the grand jury and ask them if it should be prosecuted. If the grand jury votes to take no action (ie., says “No”), then the prosecuting attorney cannot file a petition unless a grand jury later gives the prosecuting attorney permission. Conceptually, this is akin to a “No Bill.” If the grand jury votes for approval of the prosecution (ie., says “Yes”), it is conceptually like a “True Bill” and a petition can be filed. This process is NOT available AFTER a petition has been filed – remember that, unlike adult court, grand jury approval of charges against a juvenile who is alleged to have committed a felony is NOT necessary before the filing of felony charges. Note – this is NOT the same as grand jury approval for determinate sentencing of violent or habitual offenders under TFC Section 53.045, discussed below.

Before discussing 53.045, it is necessary to look at **TFC Section 51.031 (Habitual Felony Conduct)**, where Habitual Felony Conduct is defined as:

- (a) Conduct violating a penal law of the grade of felony, other than a state jail felony, if:
 - (1) the child who engaged in the conduct has at least two previous final adjudications as having engaged in delinquent conduct violating a penal law of the grade of felony; AND
 - (2) the second previous final adjudication is for conduct that occurred after the date the first previous adjudication became final; AND
 - (3) all appeals relating to the previous adjudications considered under Subdivisions (1) and (2) have been exhausted.
- (b) For purposes of this section, an adjudication is final if the child is placed on probation or committed to the Texas Youth Commission.
- (c) An adjudication based on conduct that occurred before January 1, 1996, may not be considered in a disposition under this section.

Therefore, a Habitual Felon for juvenile purposes is a child who has picked up two final prior felony adjudications in sequence, and who did so BEFORE committing the new non-state jail felony offense.

TFC Section 53.045 (Violent or Habitual Offenders)(commonly called Determinate Sentencing) provides that:

- (a) Except as provided by Subsection (e), the prosecuting attorney may refer the petition to the grand jury of the county in which the court in which the petition is filed presides if the petition alleges that the child engaged in delinquent conduct that constitutes habitual felony conduct as described by Section 51.031 or that included the violation of any of the following provisions:
 - Murder, capital murder, manslaughter, aggravated kidnapping, sexual assault, aggravated sexual assault, aggravated assault, aggravated robbery, injury to a child, elderly individual, or disabled individual (if the offense is punishable as a felony, other than a state jail felony), felony deadly conduct involving discharging a firearm, certain offenses involving controlled substances, criminal solicitation, indecency with a child, criminal solicitation of a minor, criminal attempt (if the offense attempted was murder, capital murder, or a “3g” offense under Article 42.12 of the Code of Criminal Procedure), arson (if bodily injury or death is involved), intoxication manslaughter, or conspiracy to commit any of these offenses. (I have abbreviated this section – please read the statute for the full text). **NOTE – “conspiracy” to commit the above offenses is only effective for offenses committed on or after September 1, 2007.**
- (b) A grand jury may approve a petition submitted to it under this section by a vote of nine members of the grand jury in the same manner that the grand jury votes on the presentment of an indictment.
- (c) The grand jury has all the powers to investigate the facts and circumstances relating to a petition

submitted under this section as it has to investigate other criminal activity but may not issue an indictment unless the child is transferred to a criminal court as provided by Section 54.02 of this code.
(d) If the grand jury approves of the petition, the fact of approval shall be certified to the juvenile court, and the certification shall be entered in the record of the case.

In short, these two sections tell us that, for some specific types of conduct, the State can present a petition to the grand jury and request approval of the petition for use of the expanded punishment options available through determinate sentencing. If the grand jury approves the petition (ie., says "Yes"), then the State can proceed under the Determinate Sentencing Act; if the grand jury disapproves the petition (ie., says "No"), then the State can only proceed with an indeterminate sentence. Determinate Sentencing will be covered in detail by another speaker.

How and When will a hearing be set once the Petition has been filed? TFC Section 53.05 (Time Set for Hearing) provides:

- (a) After the petition has been filed, the juvenile court shall set the time for the hearing.
- (b) The time set for the hearing shall not be later than 10 working days after the day the petition was filed if:
 - (1) the child is in detention; OR
 - (2) the child will be taken into custody under Section 53.06(d) of this code.

ANSWER

What is an Answer? An answer is a pleading filed by the child to respond to a petition filed and served on said child. An answer generally responds to each allegation in the petition by either denying it or admitting it, or admitting it in part and denying it in part. The answer can also be in the form of a general denial, denying everything.

What form should an answer be in? An answer to the petition may be oral or written and may be made at or before the commencement of the hearing. TFC Section 53.04(e).

Is an answer necessary? No. If there is no answer, a general denial of the alleged conduct is assumed. TFC Section 53.04(e).

If you want to file an answer anyway, which rules govern? Rules 83, 84 and 85 of the Texas Rules of Civil Procedure.

TRCP Rule 83 provides that the answer shall consist of an original answer and any supplemental answers as necessary. The original answer and the supplemental answers shall be indorsed, to show their respective positions in the process of pleading, as "original answer," "defendant's first supplemental answer," and so on, to be successively numbered, named and indorsed.

TRCP Rule 84 provides that the child, in his answer may plead as many several matters, whether of fact or law, as he thinks are necessary for his defense, and which may be pertinent to the cause. Such matters shall be heard in such order as directed by the court, with the exception of special appearance and motion to transfer venue, and the practice thereunder.

TRCP Rule 85 provides that the original answer may consist of motions to transfer venue, pleas to the jurisdiction, in abatement, or any other dilatory pleas; of special exceptions, of general denial, and any defense by way of avoidance or estoppel; and cross-actions. Matters in avoidance and estoppel may be stated together, or in several special pleas, each presenting a distinct defense, and numbered so as to admit of separate issues to be formed on them.

SUMMONS

What is it? Generally, it is a document issued by the court requiring the person served to appear before the court at the time set to answer the allegations of the petition. It must be accompanied by a copy of the petition. See TFC Section 53.06(b) and *In the Matter of Edwards*, 644 S.W.2d 815, 819 (Tex.App.-Corpus Christi 1982, writ ref'd n.r.e.).

Who is required to receive a summons? The child named in the petition; the child's parent, guardian or custodian; the child's guardian ad litem; and any other person who appears to the court to be a proper or necessary party to the proceeding. See TFC Section 53.06(a).

What can be ordered in the summons? In addition to ordering the child to appear to answer the allegations of the petition, the court may:

(a) Under TFC Section 53.06(c), endorse on the summons an order directing the person having the physical custody or control of the child to bring the child to the hearing. A person who violates the order to produce the child may be proceeded against under TFC Section 53.08 (Writ of Attachment) or TFC Section 54.07 (Contempt); and

(b) Under TFC Section 53.06(d), if it appears from an affidavit filed or from sworn testimony before the court that immediate detention of the child is warranted under TFC Section 53.02(b) (Detention Criteria), the court may endorse on the summons an order that a law-enforcement officer shall serve the summons and shall immediately take the child into custody and bring him before the court.

SERVICE OF SUMMONS

Why is service important? First, service of the petition and summons provides notice of the charges brought and the relief sought, as well as notice of the time and place of the hearing on those charges. Second, and equally important, a juvenile court cannot acquire jurisdiction over the child without personal service of the summons and petition on the child. *Johnson v. State*, 551 S.W.2d 379, 381 (Tex.Crim.App. 1977); *In the Matter of T.T.W.*, 532 S.W.2d 418, 418 (Tex.Civ.App.-Texarkana 1976, no writ).

Personal service on the child means ***personal*** service on the ***child***. Service by certified mail is not enough. Service on the child's attorney or the child's parent is not enough.

Service CANNOT be waived by the child. Why? Because a child is without legal capacity to waive service of process. *In the Matter of W.L.C.*, 562 S.W.2d 454, 455 (Tex. 1978).

Service CAN be waived by a party OTHER than the child. How? A party, other than the child, may waive service of summons either by written stipulation or by voluntary appearance at the hearing. TFC Section 53.06(e). Does this mean that someone can waive service *on behalf of the child*? NO. It means that those other parties can waive service *on themselves*.

Defects in the summons CAN be waived by the child, even though the child cannot waive service itself. *D.A.W. v. State*, 535 S.W.2d 21, 22 (Tex.Civ.App.-Houston [14th Dist.] 1976, writ ref'd n.r.e.).

Is service required on each parent, and the child's guardian and custodian? No. The Court in *In the Matter of Edwards*, 644 S.W.2d 815, 818 (Tex.App.-Corpus Christi 1982, writ ref'd n.r.e.) held that TFC Section 53.06(a) does NOT require issuance of summons to all such persons, and went on to hold that service on either of the child's parents is enough. The same rationale has been applied to uphold

jurisdiction when only the guardian or custodian was served. *In the Matter of J.S.*, 602 S.W.2d 585, 590-591 (Tex.Civ.App.-Amarillo 1980, no writ); *In the Matter of V.C.H.*, 605 S.W.2d 643, 647 (Tex.Civ.App.-Houston [1st Dist.] 1980, no writ). Remember that these persons can also WAIVE service in writing or by voluntary appearance.

What about the child's spouse? Service of summons on the child's spouse is only required if the court finds that the spouse is a proper or necessary party. *K.M.P. v. State*, 701 S.W.2d 939, 942 (Tex.App.-Fort Worth 1986, no writ)(the child's parent was served, but not the child's spouse). The spouse can also WAIVE service in writing or by voluntary appearance.

How can a person be served? Service of summons is governed by TFC Section 53.07(a), which states:

If a person is in the state and can be found, the summons shall be served upon him personally at least two days before the day of the adjudication hearing; or

If he is in the state and cannot be found, but his address is known or can with reasonable diligence be ascertained, the summons may be served on him by mailing a copy by registered or certified mail, return receipt requested, at least five days before the day of the hearing; or

If he is outside this state but he can be found or his address is known, or his whereabouts or address can with reasonable diligence be ascertained, service of the summons may be made either by delivering a copy to him personally or mailing a copy to him by registered or certified mail, return receipt requested, at least five days before the day of the hearing.

What if a person, other than the child, cannot be found? TFC Section 53.07(b) states that the juvenile court still has jurisdiction of the case if, after reasonable effort, a person, other than the child, cannot be found nor his post-office address ascertained, whether he is in or outside of the state. Note: under this scenario, if neither the parent nor the legal guardian or custodian can be found, the court will be required to appoint a guardian ad litem for the child under TFC Section 51.11(a).

What if the parent/guardian/custodian is actually served, but fails to appear? The juvenile court may proceed with the hearing. TFC Section 51.115(c). The court will be required to appoint a guardian ad litem under TFC Section 51.11(a). Note: if a person (other than the child) fails to appear, he/she may be held in contempt of court and fined or, in lieu of contempt, may be ordered to receive counseling or attend a parenting class. TFC Section 51.115(d).

BEWARE – TFC Section 53.07(a) requires service on the child at least two days before the adjudication hearing – if the two days have not elapsed since the child was served, then you must get a waiver of those two days from the child (not just from his attorney, but you should get a waiver from the attorney as well) prior to having the adjudication hearing. Make sure it is on the record.

Who can serve the summons? Per TFC 53.07(c), service of the summons may be made by any suitable person under the direction of the court. A probation officer is a suitable person. *P.G. v. State*, 616 S.W.2d 635, 638 (Tex.Civ.App.-San Antonio 1981, writ ref'd n.r.e.)

Is an express order from the court regarding service of summons necessary? No. *Chandler v. State*, 695 S.W.2d 248, 249 (Tex.App.-Austin 1985, no writ).

Who has the burden of proof to show that the child was personally served? The State. This is generally done through the return of service. See, generally, *In the Matter of W.L.C.*, 562 S.W.2d 454, 455 (Tex. 1978).

Is a copy of the petition required to be attached to the return? No. The petition need only accompany the summons and there is no requirement that the petition be attached to the return. A recital in the summons that the petition was attached to it is enough to show proof of service, absent any specific rebutting evidence that it was not. It is the child's burden to provide and prove any such rebutting evidence. *In re M.A.*, UNPUBLISHED, No. 03-98-00682-CV, 1999 WL 977071 (Tex.App.-Austin 1999, no pet.); *In the Matter of R.L.T.*, UNPUBLISHED, No. 01-96-00397-CV, 1997 WL 804196 (Tex.App.-Houston [1st Dist.] 1997, no pet.).

Can service of summons be oral? Yes, although the better practice is to do so in writing. The requirements of the Family Code can be satisfied through an in-court service of the petition, accompanied by the trial court's personal oral summons to the child of the time and place of the next hearing in the case. This should be done on the record. *In the Matter of K.P.S.*, 840 S.W.2d 706, 709 (Tex.App.-Corpus Christi 1992, no writ).

Is a new summons required each time a petition is amended? No. Service of the original petition and summons is enough to confer jurisdiction, even if an amended petition is filed at a later date. *In the Matter of S.D.W.*, 811 S.W.2d 739, 746 (Tex.App.-Houston [1st Dist.] 1991, no writ). Note, however, that if the amended petition contains new charges or is otherwise materially different, due process will require timely notice (in advance of the hearing) of the specific issues to be decided so that a reasonable opportunity to prepare will be afforded. See, generally, *B.R.D. v. State*, 575 S.W.2d 126, 130 (Tex.Civ.App.-Corpus Christi 1978, writ ref'd n.r.e.), and *McBride v. State*, 655 S.W.2d 280, 283 (Tex.App.-Houston [14th Dist.] 1983, no writ).

Is a new summons required when there is a trial amendment? No, so long as the amendment does not deprive the child of the constitutional right to notice of the issues to be heard (because of material changes). See, generally, *In the Matter of J.E.*, 800 S.W.2d 958, 959 (Tex.App.-Corpus Christi 1990, no writ).

Is a new summons required when there is a continuance? No. Validly acquired jurisdiction does not cease just because there is a continuance in the case. *In the Matter of C.C.G.*, 805 S.W.2d 10, 12-13 (Tex.App.-Tyler 1991, writ denied).

What about the two day requirement when there is an amended petition? The State is not required to serve the child with a copy of the amended petition two days prior to the hearing, as long as the petition is amended at such time, and under such circumstances, as to be basically fair to the child. In any event, the original petition must have been served at least two days prior to the adjudication hearing, absent a waiver by the child. *R.X.F v. State*, 921 S.W.2d 888, 893-894 (Tex.App.-Waco 1996, no writ).

Don't forget TFC Section 51.10. The child's attorney is entitled to 10 days to prepare for any adjudication or transfer hearing, so be sure to also get a waiver of 10 days to prepare, and get it ON THE RECORD.

Costs of service and travel expenses. Per TFC Section 53.07(d), the court may authorize payment from the general funds of the county of the costs of service and of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

Special requirements regarding a summons for a transfer (certification) proceeding. The summons for a hearing to consider Waiver of Jurisdiction and Discretionary Transfer to Criminal Court under TFC Section 54.02(b) **MUST** state that "the hearing is for the purpose of considering discretionary transfer to criminal court." This requirement is jurisdictional in nature and failure to comply will deprive the court of jurisdiction and render the transfer and subsequent conviction void.

The exact language of the statute does not have to be used, but all of the required information must be conveyed. *In the Matter of J.R.C.*, 551 S.W.2d 748, 754 (Tex.Civ.App-Texarkana 1977, writ ref'd n.r.e.).

Under *Hardesty v. State*, 659 S.W.2d 823, 825 (Tex.Crim.App. 1983), jurisdiction may be saved if the summons, while lacking some of the necessary information, expressly incorporates the allegations of the petition, but only if the petition contains the balance of the required information.

Waiver of defects in a transfer summons. A defect in the transfer summons cannot be waived solely by the child's attorney; rather the waiver must also be joined in by the child. *In re K.W.S.*, 521 S.W.2d 890, 894 (Tex.Civ.App.-Beaumont 1975, no writ).