

Criminal Violations, Delinquent Conduct and CINS

The categorization of a “child’s” actions as “criminal” or as “delinquent conduct” or as “child in need of supervision” determines which court has jurisdiction and also determines dispositional limits. If a court **without jurisdiction** enters an **order**, the order is void.

I. CRIMINAL COURT JURISDICTION OF ‘CHILD’S’ CONDUCT

A. District Court; felonies

- Those matters transferred from juvenile court.
- Aggravated perjury. P.C. § 37.03, F.C. § 51.03 (c)
“nothing...prevents criminal proceedings...”
AG Opinion No. DM-461. Jurisdiction concurrent with juvenile court.

B. Statutory County Court; jailable misdemeanors

- Appeals of Class C matters
- Perjury. P.C. § 37.02, F.C. § 51.03 (c)
AG Opinion No. DM-461. Jurisdiction concurrent with juvenile court.

C. Justice of the Peace/Municipal Courts

- City ordinances, including traffic ordinances, curfews
- Transportation Code violations that are “traffic offenses” are not delinquent conduct, not CINS.

F.C. § 51.03 (a) (1) and (b) (1) exclude traffic offenses “from” delinquent conduct or C.I.N.S.;

P.C. § 8.07 allows prosecution and conviction for “traffic offenses”;

Trans. C. § 729.003 (g) assigns traffic offenses to criminal courts, excluding juvenile courts. Traffic offenses are not transferable to juvenile court.

Includes:

- Failure to stop and render aid without personal injury, but with property damage under \$200. Trans. C. § 550.022
- Failure to stop and render aid without person injury, unattended vehicle; property damage under \$200. Trans. C. § 550.024
- Reckless driving. Trans. C. § 545.401
- Penal Code violations with fine only penalty, Class C
P.C. § 49.031, open container
P.C. § 38.151, taunting police animal
- Alcoholic Beverage Code.
Especially Chapter 106 purchase, attempt to purchase, consumption, possession.
1st and 2nd DUI for “any detectable amount.”
DUI is not a lesser included of DWI. ABC § 106.041.

- Education Code
Failure to attend school. E.C. § 25.094
K – 18 years
- Family Code
Truancy cases transferred annually from juvenile court to lower courts.
F.C. §54.021
1999. F.C. §52.027 (h). Lower court has the option of holding a child in contempt (\$500 fine) instead of referring the contempt conduct to juvenile court.

The cases are filed in the justice of the peace or municipal courts as the court of origin. Even if destined to be transferred to juvenile court, the court of origin/filing is still the lower court. Traffic matters can not be transferred to juvenile court, nor do traffic matters count as a “conviction” for purposes of an optional or mandatory transfer to juvenile court. Traffic matters can only be appealed as in criminal cases.

Transfer from a lower court to juvenile court is possible if:

1. Prior to 1987 – 3rd violation became CINS. No criminal court or juvenile court involvement in 1st and 2nd offenses.
2. 1987 to 1989 – Lower court jurisdiction over 1st and 2nd offense. 3rd offense could be transferred to juvenile court or kept in lower court.
3. 1989 to 1991 – Public intoxication became CINS. Otherwise, reverted to prior to 1987; i.e. no court involvement in 1st or 2nd offense.
4. 1991 – Lower court jurisdiction over 1st and 2nd offense. Mandatory transfer to juvenile court upon filing 3rd offense (i.e. 2 prior “convictions”). F.C. § 51.08 (b)
Optional transfer of even the first fine only offense, including failure to attend school but not including traffic matters or public intoxication.
F.C. § 51.08 (b)(2)
Teen Court, CCP art. 45.051, is deferred adjudication not “conviction.”
5. September 1, 2001. A lower court with a juvenile case manager is not obligated to transfer the 3rd offense to juvenile court. F.C. § 51.08 (d), CCP art. 45.054

II. JUVENILE COURT JURISDICTION

Conduct cannot be both CINS and delinquent conduct.

A. *Child in Need of Supervision (CINS)*

Some conduct is within the jurisdiction of a juvenile court merely because of status as a “child” or because of the need for intervention/prevention.

- 3rd fine – only allegation (i.e. 2 prior convictions)
(September 2001: unless lower court has juvenile case manager)
- Truancy. F.C. § 51.03 (b) (2)
1987 Unless “child” is married/divorced/widowed
1991 F.C. § 54.021. Truancy can be transferred from juvenile court to J.P. annually for original filing with J.P.
1995 Truancy can also be transferred to municipal court annually
3rd offense (i.e. 2 prior convictions) must be referred to juvenile court

2001 Defense of “married, divorced or widowed” eliminated.
N.B. The married/divorced/widowed defense never applied to Education Code § 25.094, failure to attend school.

- Running away from home. F.C. § 51.03 (b) (3) unless “child” is married/divorced/widowed. “Substantial length of time” is flexible.
- Huffing paint and glue...and volatile chemicals. F.C. § 51.03 (b) (4). Health and Safety Code § 484.002. This is CINS despite being jailable misdemeanor for adults.
- Public Intoxication. F.C. § 51.03 (b) (1) since 1989.
- Expulsion (Violation of Student Code of Conduct). F.C. § 51.03 (b) (5). Must be for previously communicated, written standards of conduct. See also Education Code § 37.007 (c) for “serious and persistent” misbehavior in the school districts’ own Alternative Education Programs.
- Violations of a child-at-risk court order. F.C. § 51.03 (b) (6). Under F.C. § 264.305 TDPRS can request a district court order for family members of any at risk young person. If a “child” violates the order, the violation is referred to juvenile court.

B. Delinquent Conduct

- Penal code violations that are jailable misdemeanors or felonies F.C. § 51.03 (a). Since 1993 includes both Texas and Federal penal codes. Includes perjury.
- Contempt of a J.P. or municipal court order. 1995, F.C. § 51.03 (a) (3). The lower court must not “find” contempt but refer the conduct that would amount to contempt to the juvenile court. 1999, lower court has the option of referring the contempt to juvenile court or entering a finding of contempt and setting a fine up to \$500.
- DUI – driving under the influence of any amount of alcohol, 3rd offense. F.C. § 51.03 (a) (5). ABC § 106.041
- DWI F.C. § 51.03 (a) (4). Driving, boating, flying, etc. while intoxicated. Until 1997, 1st and 2nd offenses were CINS. In 1997, even the 1st offense is delinquent conduct.
- N.B. September 1, 2001, evading arrest using a vehicle may have an increased penalty and there will be more drivers license restrictions for DWI offenders.
- Transportation Code § 550.021, 550.023, 550.024 for failure to stop and render aid for personal injury or property damage of \$200 or more.

C. Probation Violation

- Probation Violations after September 2001. F.C. § 51.03 (a) (2) Violations of adjudication and modification orders, except Class C, truancy, runaway violations (i.e. no commitment to TYC). 1999, TYC commitment standards were refined.