

When Can A Juvenile Be Certified As An Adult For A Serious Criminal Offense?

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When a minor commits a serious offense, the prosecutor may have discretion to petition the juvenile court to waive its jurisdiction. If the petition is successful, in lieu of the case being heard in juvenile court and the child being tried as a juvenile, the case will instead be heard in an adult criminal court.

The U.S. Constitutional prohibition against being placed twice in jeopardy for the same offense applies to juvenile court proceedings as well as adult proceedings.¹ Therefore, in every case, jurisdiction must be established. In cases involving minors, juvenile courts have exclusive jurisdiction² regarding cases involving children aged 10-17 who stand accused of committing criminal offenses. However, there is an exception. A juvenile court judge may waive jurisdiction and choose to transfer a juvenile to be tried as an adult in an (adult) district court.³ The process associated with this transfer is referred to as *certifying a juvenile as an adult*. Chapter 54 of the Texas Family Code⁴ establishes procedures by which a juvenile may be certified as an adult.

1. Track One: Accused is Still a Juvenile
2. Track Two: Cold Cases: Accused was a Juvenile at the time of the Offense, but reaches adulthood prior to trial (“Post-18 Certification”)
3. Track Three: Mandatory Transfers

What factors must be established in order for a juvenile to be certified as an adult?

Texas Family Code Section 54.02(a) mandates that a juvenile court judge must find that the following factors exist in order to certify a juvenile as an adult for the purposes of criminal prosecution:

1. The child must stand accused of an offense that is a felony;
2. The welfare of the community at large would be served by the certification either because of the heinousness of the offense or the history of the child;
 - a. In assessing the seriousness of the offense, the juvenile court judge must consider:
 - i. Whether the crime was committed against a person or property;
 - ii. The maturity of the child;
 - iii. The child’s record and prior history (in other words, is this child a habitual offender?);
 - iv. Whether the public will be protected by the certification;
 - v. Whether the child may be rehabilitated relying only on the juvenile system’s resources.

The accused juvenile is not entitled to a jury trial as to the issue of certification. It is the duty of the prosecuting attorney to raise and try the issue of certification to the juvenile court. In the event the juvenile court seeks to proceed with the certification, the prosecuting attorney must seek an indictment from the grand jury in order to complete the process.

Age 14 is the minimum age at which a child may be certified as an adult. Certification as an adult is limited to prosecution for specified violent crimes. Certification is possible for a juvenile defendant if that child is fourteen or older at the time of the alleged offense, and the offense is:

1. a capital felony,
2. an aggravated controlled substance felony that carries a higher minimum term or fine than a first-degree felony,
3. a first degree felony.⁵

In a situation dealing with a cold case, or post-18 certification, the process is outlined in Texas Family Code Section 54.02(j).⁶ The factors enumerated above still come into play. However, additional factors must be addressed, and the juvenile court must enter one of two alternative findings:

1. Due to factors beyond the control of the State of Texas, the case could not proceed to trial prior to the accused attaining majority; OR
2. Due to factors beyond the control of the State of Texas, the case could not proceed to trial prior to the accused attaining majority AND the State lacked probable cause AND the State found new evidence against the accused prior to the defendant attaining the age of 18.

How can defense counsel try to attack certification of a juvenile as an adult?

- a. Look to factors that impact on the maturity and sophistication of the child.
- b. Consider positive factors in the child's history (helping with younger children in the household, school activities, extracurricular activities, religious activities).
- c. Intellectual development and/or cognitive or physical impairment, such as a low I.Q., mental health history, whether the child historically received treatment or aid for those conditions, or lack of treatment for such issues. Defense counsel should focus not only on such factors, but on how resources and systems available in the juvenile court system can best address those conditions.
- d. As set out in Chapter 54, before the commencement of the certification hearing, "the juvenile court shall order and obtain a complete diagnostic study, social evaluation, and full investigation of the child, his circumstances, and the circumstances of the alleged offense,"⁷

What happens if the juvenile court decides to waive its jurisdiction over the minor, certifies the child as an adult, and transfers the child's case to an (adult) district court?

As noted above, the prosecuting attorney must present the case to the grand jury and procure an indictment against the "certified adult" offender.⁸ Once certified and indicted, the "certified adult offender" is subject to adult punishment ranges. In the event the juvenile court refuses to certify the accused as an adult, and the accused is

under 18 years old, the juvenile defendant may nonetheless be tried in the juvenile court. What happens if the accused is over the age of 18 and the juvenile court refuses to certify the defendant? The juvenile court loses jurisdiction. If there is a loss of jurisdiction in a regard to a post-18 accused, the defendant is released.

In the event the juvenile defendant is 14 years old or less and stands accused of committing a second degree, third degree or state jail felony, such a defendant cannot be subjected to certification as an adult.

What if the juvenile defendant is over 14?

In the event a juvenile is fifteen years of age or older and that juvenile defendant is accused of committing any felony, including second or third degree, or a state jail felony, that juvenile defendant (fifteen or older, not yet aged eighteen) is eligible for certification and transfer of their case to adult criminal court.⁹ Said differently, juveniles have some protection against being prosecuted or convicted of a crime committed before they reach the age of 18 in (adult) criminal court unless the juvenile court waives its jurisdiction and certifies the juvenile to be transferred to adult court for criminal prosecution.¹⁰

If a juvenile defendant is transferred and jurisdiction waived, the criminal court may not remand the case back to the juvenile court.¹¹ When certified, the juvenile no longer has the right to any additional protections that the juvenile system provides other than with regard to the place of pre-trial confinement. There is legislation that allows the juvenile judge to order that the “certified adult defendant” be incarcerated in a juvenile detention facility pending the criminal trial in the event bond is not made.¹² The juvenile offender retains the right to appeal the conviction or deferred adjudication for the transferred conduct.¹³

Are juveniles guaranteed constitutional protection?

A juvenile offender is not guaranteed the constitutional right to have their case tried in juvenile court.¹⁴ A leading case regarding the rights of a juvenile defendant is *Kent v. United States*.¹⁵ *Kent* involved a juvenile who was on probation and who

was arrested for rape and robbery. The trial court waived its jurisdiction and summarily transferred the case to adult court without giving the juvenile defendant the benefit of a hearing, investigating the child or the facts underlying the case, or providing rulings on any of the defense counsel's motions. The certified adult's conviction was affirmed by the court of appeals. The United States Supreme Court reversed and remanded the trial court's decision, holding that a juvenile defendant has due process rights that attach when a juvenile court hears a request for certification of the defendant as an adult. *Kent* stands for the proposition that a hearing must be held as a condition precedent prior to the juvenile court waiving jurisdiction, and transferring the subject juvenile case to an adult court. Why? The United States Supreme Court held that waiver of jurisdiction is of vital importance in assuring the statutory rights of the juvenile defendant.¹⁶

What are the due process guarantees granted to a juvenile for whom a prosecuting attorney seeks certification as an adult?

The juvenile defendant is entitled to due process via proper notice in regard to any petition filed by the State in regard to Juvenile Court Waiver Of Jurisdiction And Discretionary Transfer To Criminal Court. The juvenile defendant is also entitled to right to counsel, right of confrontation, and retains the right to assert their privilege against self-incrimination. The notice provision is an important element. After the State files its petition to transfer the juvenile to adult criminal court, the law mandates that the juvenile court set a date for the hearing within ten days of the petition's filing.¹⁷ The child is entitled to service of the summons, as are the child's parent(s), the child's guardian ad litem, as is any other person who appears to be a proper party to the proceeding.¹⁸ It is mandatory that the summons be served at least two days prior to the certification hearing.¹⁹ In regard to notice, if the person is in Texas, but the process server cannot find them, the summons may be mailed to them by registered or certified mail at least five days before the hearing.²⁰

In the event a person entitled to notice of the certification hearing is outside Texas, following due diligence, the summons may be sent to such an individual via certified mail at least five days before the hearing.²¹ In the event the prosecuting attorney fails to adhere to the notice requirements mandated by statute, the juvenile court loses its ability to consider the transfer.²²

How does the prosecuting attorney establish requisite notice to the juvenile defendant and the other individuals entitled to notice of the certification hearing?

The following elements must be included in the petition filed by the A.D.A.:

1. The time, place, and manner of the alleged acts,
2. The penal code provision or other provision allegedly violated due to the child's actions or omissions,
3. The name, age, and residence address, if known, of the child who is the subject of the petition,
4. Identifying information, including name and residence address, if known, of the child's parent, guardian, or custodian, and/or identifying information for any known adult relatives who do live in Texas;
5. The name and address of the child's spouse, if any;
6. Whether the child is accused of engaging in habitual felony conduct;
7. The purpose of the hearing; and
8. If the child is under 18, that hearing is for the purpose of considering the court's right to make a discretionary transfer of the case to criminal court; and
9. If the child is over 18, that the hearing is for the purpose of the juvenile court waiving its right to assert jurisdiction and transfer the case to criminal court.²³

If no answer is filed, the juvenile court is to presume that the child generally denies the allegations set out in the State's petition for certification.²⁴ In the event the juvenile defendant is certified to adult court, the Texas Family Code requirements no longer apply.

The third type of certification/transfer focuses on mandatory transfers. Mandatory transfers focus on cases where the juvenile court must waive its jurisdiction, and transfer the juvenile to the appropriate adult criminal court for criminal proceedings if and when the juvenile was previously transferred to adult criminal court through certification, and further, the juvenile is accused of committing a felony. There are exceptions to this mandatory transfer:

1. The grand jury failed to indict the juvenile;
2. a not guilty verdict was entered in regard to the charges against the juvenile in the prior felony cases;
3. the prior case transferred to criminal court was subsequently dismissed with prejudice; or,
4. while the juvenile defendant was certified as an adult, the case was transferred, the certified adult was convicted, but the conviction was later overturned on appeal.²⁵

In contrast to the other tracks, a juvenile defendant who is the subject of a mandatory transfer proceeding need not have the diagnostic study, investigation, or social evaluation of the juvenile as a condition precedent to the hearing.²⁶

Since 1996, there is no right to an appeal of a certification ruling. Appeal about the legality of a certification and transfer proceeding may be pursued following conviction or deferred adjudication in adult criminal court of those acts or omissions underlying the transfer.²⁷

Determinate sentences are given to juveniles with more frequency than cases involving certification of juveniles as adults. Texas law provides mandatory requirements for certification proceedings involving juvenile defendants. Section 54.02 of the Texas Family Code establishes the policies and requirements for a juvenile court to conduct a certification hearing. Due process guarantees must be satisfied, even in juvenile certification proceedings.

Many youths charged with committing serious offenses, if given the chance, may still have the ability to be rehabilitated. These are not easy calls for courts to make.

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- ¹ Breed v. Jones, 421 U.S. 519 (1975).
- ² Tex. Fam. Code Ann. § 51.02.
- ³ *Id.*
- ⁴ Tex. Fam. Code Ann. § 54.02.
- ⁵ Tex. Fam. Code Ann. § 54.02(a)(2)(A).
- ⁶ Tex. Fam. Code Ann. § 54.02(j).
- ⁷ Tex. Fam. Code Ann. § 54.02(d).
- ⁸ Tex. Code Crim. Proc. Ann. Art. 21.
- ⁹ Tex. Fam. Code Ann. § 54.02(a)(2)(B).
- ¹⁰ Tex. Penal Code Ann. § 8.07(b).
- ¹¹ Tex. Fam. Code Ann. § 54.02(i).
- ¹² Tex. Fam. Code Ann. § 54.02(p).
- ¹³ Rodriguez v. State, 191 S.W. 3d 909, 910 (Tex. App.—Dallas 2006, no pet.).
- ¹⁴ In Matter of P.B.C., 538 S.W.2d 448 (Tex. Civ. App. – El Paso 1976).
- ¹⁵ Kent v. United States, 383 U.S. 541 (U.S. 1966).
- ¹⁶ *Id.*, at 556.
- ¹⁷ Tex. Fam. Code Ann. § 53.05.
- ¹⁸ Tex. Fam. Code Ann. § 53.06.
- ¹⁹ Tex. Fam. Code Ann. § 53.07 (a).
- ²⁰ *Id.*
- ²¹ *Id.*
- ²² Johnson v. State, 594 S.W. 2d 83, 84 (Tex. Crim. App. 1980).
- ²³ Tex. Fam. Code Ann. § 53.04(d).
- ²⁴ Tex. Fam. Code Ann. § 53.04(e).
- ²⁵ Tex. Fam. Code Ann. § 54.02(m).
- ²⁶ Tex. Fam. Code Ann. § 54.02(n).
- ²⁷ Rodriguez v. State, *supra*. Tex. Code Crim. Proc. Ann. Art. 44.57.

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