

TRANSFER OF JUVENILE CASES

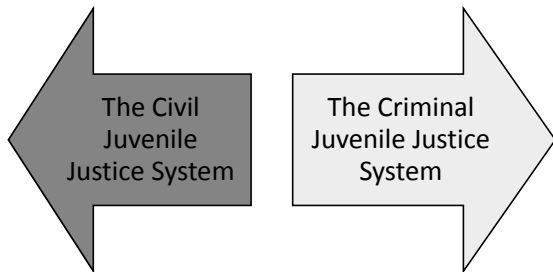
Presented by Jan Blacklock Matthews
City of Wilson



History's Blurred Lines



Two Juvenile Justice Systems

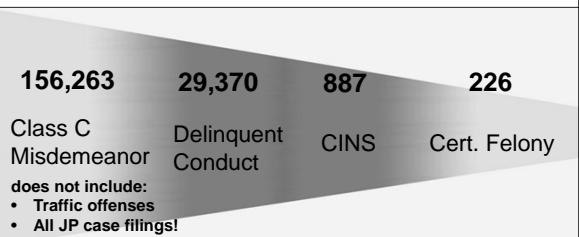


Learning Objectives

1. Identify Statutory Authority for Transferring Cases to Juvenile Court
2. Distinguish Mandatory vs. Discretionary Transfers
3. Describe Process for Transferring



Texas' Shadow Courts



■ Criminal
■ Civil



MY decision to transfer cases??

Why not transfer all Juvenile cases??

The ONLY thing
we have to fear,
is FEAR itself...



And the Court Clerk!!



**Texas Family Code
Section 51.08**

“Transfer from Criminal Court”

a/k/a
Waiver of Jurisdiction



Defendant Must Be A “Child”

- **Section 51.08(a), Family Code**
- **Section 51.02(2) defines a “child”**
...person who is 10 years of age or older and under 17 years of age at time of offense



Offenses Subject to Transfer to Juvenile Court

- **General Rule – FC 51.08(a):**
Most criminal offenses filed against a child are to be transferred to Juvenile Court
- **Exceptions:**
 - Perjury;
 - Traffic offense;
 - Fine only misdemeanor;
 - Penal ordinance violation







Mandatory Transfer to Juvenile Court

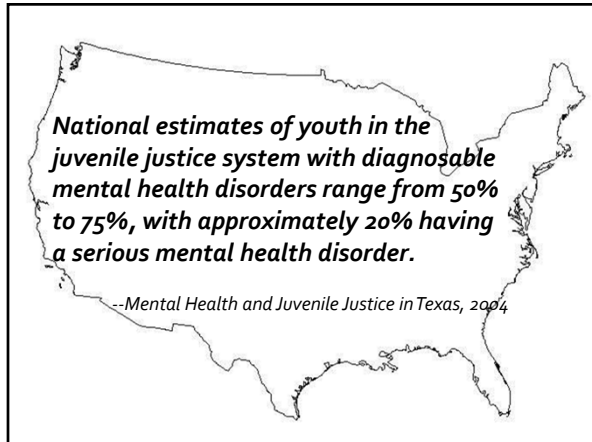
- **Two or More Misdemeanors**
 - punishable by fine only
 - other than a traffic offense
- **Two or More Violations of a Penal Ordinance**
 - other than a traffic offense
- **Combination of above**



**Juvenile Case Manager Exception
Family Code, 51.08(d)**

**Court with
Juvenile Case Manager Program
[under Article 45.056, Code of Criminal Procedure]
is not subject to mandatory transfer**





National estimates of youth in the juvenile justice system with diagnosable mental health disorders range from 50% to 75%, with approximately 20% having a serious mental health disorder.

—Mental Health and Juvenile Justice in Texas, 2004

**Discretionary Transfer
to Juvenile Court**

No previous fine only Convictions

OR

One fine only Conviction

Or anytime at courts' discretion



(NO Traffic Offenses)







“Sexting” Cases
(43.261 Penal Code)?
Must ALWAYS transfer a sexting case
against a child

NO Juvenile Case Manager Exception!!

 **Municipal & Justice Courts**
Have Jurisdiction over
17 or Older ONLY 

 **Minor in Possession of**
Tobacco?
(161.252 HSC)

Section 161.257, Health and Safety Code:
“Title 3 of the Family Code, does not
apply to a proceeding under this
subchapter.” 

Procedure & Process
Family Code, Section 51.08(a)

When transferring, what documents must the transferring court send to the juvenile court?

...shall transfer the case to the juvenile court, copy of the accusatory pleading and other papers, documents, and transcripts of testimony relating to the case...



Transfer of Failure to Attend School Cases

Family Code, Section 51.08(e)

Juvenile Court may not refuse mandatory transfer of a FTAS case if prosecuting attorney determines case is legally sufficient for adjudication in juvenile court



Transfer to Municipal Court from Juvenile Court

- Juvenile Court may transfer truancy cases on either a:
 - case by case basis or
 - as a class
- IF Municipal Court accepts...
 - File Complaint as FTAS
 - (Code of Crim. Proc., Chapter 45)
 - NOT Truancy



Ethical issues?

- Inquiring defendants, parents, interested parties?
- Double jeopardy?
- Others?



Discussion Questions?





TRANSFER OF JUVENILE CASES

Presented by Jan Blacklock Matthews, City of Wilson

Learning Objectives:

- (1) Identify Statutory Authority for transferring Juvenile Cases from Municipal Court to Juvenile Court
- (2) Distinguish between Mandatory and Discretionary Transfer of Juvenile Cases
- (3) Describe the Process for Transferring a Case to the Juvenile Court

Statutory Authority:

- Texas Family Code (TFC), Section 51.08—**Transfer from Criminal Court**
- TFC, Section 51.02 (2)—**Definition of “Child”**
- TFC, Section 51.08 (b)—**“Shall”** waive jurisdiction if:
 - (b)(1)(A) “Sexting” case under Texas Penal Code, Section 43.261; or
 - (b)(1)(B)(i) Two or more fine only misdemeanors;
 - (b)(1)(B)(ii) Two or more penal ordinance violations; or
 - (b)(1)(B)(iii) Combination

*** NO Traffic offenses may be transferred*
- TFC, Section 51.03—**Delinquent Conduct; Conduct Indicating a Need for Supervision**

Mandatory vs. Discretionary Transfer:

- Mandatory transfer of child previously **convicted of two or more fine only offenses** (see TFC, Sec. 51.08(b)(1)(B))
Exception: Courts with Juvenile Case Manager may choose whether to transfer (see TFC, Sec. 51.08(d))
- Mandatory transfer of sexting cases under Penal Code, (see Penal Code, Sec. 43.261)
NO Juvenile Case Manager exception for this type offense
- Discretionary transfer of offenses (other than traffic)
No or only one previous non-traffic conviction at courts’ discretion (see TFC, Sec. 51.08(b)(2))

Process for Transferring Case to Juvenile Court:

- Notify judge ASAP upon filing of third non-traffic offense and/or sexting offense
- File Report to Juvenile Court required by TFC, Section 51.08(c) with Waiver of Jurisdiction and Transfer to Juvenile Court (both forms can be found in TMCEC 2011 Forms Book/XV. Juveniles/ General Forms)
- Include copy of complaint/citation and other papers, documents, transcripts of testimony related to the case
- Make appropriate docket/computer entries indicating transfer; *Good Practice: notify defendant*

Transfer of Failure to Attend School Cases (FTAS)

- Juvenile Court may not refuse mandatory transfer of a FTAS case if prosecuting attorney determines legal sufficiency for adjudication in Juvenile Court
- Juvenile Court may transfer truancy cases, case by case or as a class, if municipal court accepts
 - May transfer up to one year as a class
 - Complaint would be filed as criminal FTAS, not civil truancy

Transfer of Juvenile Cases from Municipal to Juvenile Court

Case filed in municipal court



start

First question:
Is the case a sexting offense against a child?

MUST waive jurisdiction and TRANSFER case to juvenile court end

YES

NO

Third question:
Does court have a juvenile case manager?

← YES

Second question:
Does juvenile have 2+ prior (non-traffic) convictions?

YES

NO

No mandatory transfer

MUST waive jurisdiction and TRANSFER case to juvenile court end

NO

Final question:
Should non-traffic case be transferred?

YES

NO

Waive jurisdiction and TRANSFER case to juvenile court

Retain jurisdiction of case and proceed

• Send case documents to juvenile court end

*Notify juvenile court of case end

REPORT TO JUVENILE COURT OF COMPLAINT FILED (Sec. 51.08(c), F.C.)

CAUSE NUMBER: _____

STATE OF TEXAS	§	IN THE MUNICIPAL COURT
VS.	§	CITY OF _____
_____	§	_____ COUNTY, TEXAS

- Offense alleged: _____
- Juvenile's birthdate: _____
- Complaint filed: _____, 20__
- Reported to Juvenile Court: _____, 20__
- Final Disposition entered: _____, 20__
- Reported to Juvenile Court: _____, 20__
- Certified Copy of Final Disposition Attached: _____, 20__

Signed and entered this ____ day of _____, 20__.

(municipal court seal)

 Judge, Municipal Court
 City of _____
 _____ County, Texas

Editor's Note: It is suggested that this form be in triplicate; the top copy would report to the Juvenile Court the filing of a complaint against a juvenile in Municipal Court and would record the docket number, the juvenile Defendant's name, birth date, and the offense alleged; the second copy would then accompany the copy of the final disposition to the Juvenile Court and the third copy would be retained in the Municipal Court's file to document that the required reports were made. This form would be used only in cases where the Municipal Court does not waive its jurisdiction.

WAIVER OF JURISDICTION AND TRANSFER TO JUVENILE COURT (Sec. 51.08(b), F.C.)

CAUSE NUMBER: _____

STATE OF TEXAS	§	IN THE MUNICIPAL COURT
VS.	§	CITY OF _____
_____	§	_____ COUNTY, TEXAS

Defendant's Birth Date: _____

TO: Juvenile Court

Pursuant to Section 51.08, Family Code, the Municipal Court referenced above **waives** its jurisdiction in the case set out and transfers the case to the Juvenile Court named. The case was not transferred to the Municipal Court by the Juvenile Court, nor is it a case alleging a traffic violation. The case does allege an offense classified as a misdemeanor punishable by fine only or violation of city ordinance other than traffic.

The records of this Municipal Court show of this Defendant:

- No prior case filed
- No prior conviction
- One previous conviction
- Two previous convictions

Docket Number: _____
 Offense: _____
 Punishment Assessed: _____
 Final Disposition: _____

Docket Number: _____
 Offense: _____
 Punishment Assessed: _____
 Final Disposition: _____

Check only what is applicable. Add as many prior convictions as your records show except traffic or tobacco offenses.

The following marked documents are enclosed to effect this waiver of Municipal Court jurisdiction and transfer of the case to the Juvenile Court.

- Citation
- Complaint
- Magistrate's Warning Certificate
- Juvenile Confession/Voluntary Statement Warnings
- Waiver of Rights by a Juvenile
- Magistrate's Certification and Acknowledgment of Voluntary Statement of Juvenile

- Appearance Bond
- Other: _____

Signed and entered this _____ day of _____, 20____.

(municipal court seal)

 Judge, Municipal Court
 City of _____
 _____ County, Texas

Editor's Note: Check only those items that are available in a particular case. Not every case will have every item. In transferring the case, the Municipal Court should send all original papers to the Juvenile Court, but it should keep copies in its own case file.

A Municipal Court that implements a juvenile case manager under Article 45.054, C.C.P., may—but is not required to—waive its original jurisdiction, except in sexting cases against children. Sec. 51.08(b)(1), F.C.