

# Juvenile Law: Magistration, Admonitions, and Detention

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## Today's Webinar

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1. Juvenile Law Basics
2. Juvenile Detention
3. Juvenile Magistration & Admonishments
4. Juvenile Statements

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# Resources

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Juvenile Deskbook  
*(Look for updated version this spring)*



Family Code



Code of Criminal  
Procedure & Penal  
Code



TJCTC Forms



[Texas Juvenile Law,  
9<sup>th</sup> Edition by Robert  
Dawson](#)



[2018 Juvenile  
Justice Handbook](#)

# Juvenile Law Basics

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Juvenile case law uses a lot of civil terms because the juvenile system originated from a social-welfare system. It was created originally as a civil system. Therefore, the current juvenile system is a quasi-criminal system.

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Who is a  
child?

- ❖ “Child” means a person who is:
  - ❖ 10 years of age or older and under 17 years of age; 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.

*Family Code § 51.02(2).*

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# What is delinquent conduct?

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- Conduct, other than a traffic offense, that violates a penal law of this state or of the US punishable by imprisonment or by confinement in jail;
- Conduct that violates a lawful court order under circumstances that would constitute contempt (in justice court; municipal court; county court for conduct punishable by fine only; or a truancy court)
- Conduct that violates Penal Code §§ 49.04, 49.05, 49.06, 49.07, or 49.08 (Intoxication offenses)
- Conduct that violates Alcoholic Beverage Code § 106.041 (relating DUI, third or subsequent offense)
- Family Code § 51.03

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# What is Conduct Indicating a Need for Supervision (CINS)?

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- ❖ If a child has not been referred to the juvenile court
  - ❖ conduct, other than a traffic offense, that violates:
    - ❖ the penal laws of this state of the grade of misdemeanor that are punishable by fine only; OR
    - ❖ the penal ordinances of any political subdivision of this state;
  - ❖ runaway
  - ❖ huffing
  - ❖ school conduct violations resulting in expulsion of the defendant (student)
  - ❖ prostitution
  - ❖ electronic transmission of certain visual material depicting a minor (sexting)

*Family Code § 51.03*

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# What is a Status Offender?

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- ❖ A child who is accused, adjudicated, or convicted for conduct that would not, under state law, be a crime if committed by an adult, including:
    - ❖ running away from home
    - ❖ A violation of standards of student conduct
    - ❖ A violation of juvenile curfew ordinance or order
    - ❖ A violation of the Alcoholic Beverage Code (ABC) applicable to minors only
    - ❖ A violation of any other fineable only offense, but only if the conduct would not have been criminal if engaged in by and adult.
- Family Code § 51.02(15)*

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# Age Affecting Criminal Responsibility

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- ❖ A person may not be prosecuted for or convicted of any offense that the person committed when younger than 15 years of age except:
    - ❖ Perjury [(1)]
    - ❖ A violation of a penal statute cognizable under Chapter 729, Transportation Code, except for conduct for which the person convicted may be sentenced to confinement (or city ordinance traffic violation) [(2)-(3)]
    - ❖ Misdemeanor punishable by fine only [(4)]
    - ❖ Violation of a penal ordinance of a political subdivision [(5)]
    - ❖ Capital felonies, aggravated controlled substance felonies, first degree felonies
- Penal Code § 8.07(a)

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## Age Affecting Criminal Responsibility (continued)

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Unless the juvenile court waives jurisdiction and certifies the individual for criminal prosecution, a person may not be prosecuted for or convicted of any offense committed before reaching 17 years of age except an offense in 1-5 on the previous slide

No person may, in any case, be punished by death for an offense committed while the person was younger than 18 years

*Penal Code § 8.07(b)-(c)*

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## Age Affecting Criminal Responsibility (continued)

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A person may not be prosecuted for or convicted of a fine only misdemeanor that the person committed when younger than 10

*Penal Code § 8.07(d)*

### EXCEPTION FOR CERTAIN SCHOOL OFFENSES

An officer MAY NOT issue a citation or file a complaint for conduct by a child younger than 12 years of age that is alleged to have occurred on school property or on a vehicle owned or operated by a county or independent school district:  
disruption of class or transportation

*Code of Criminal Procedure Art 45.058(j)*

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# Presumption Against Culpability

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A person at least 10 but younger than 15 is PRESUMED incapable of committing a fine-only misdemeanor offense, other than an offense under a juvenile curfew order

- ❖ May be refuted by prosecution by preponderance of evidence that child had sufficient capacity to understand that conduct was wrong at the time it was engaged in
- ❖ Do not have to prove that child knew act was criminal or knew the legal consequences of the offense

*Penal Code § 8.07(e)*

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# Lack of Capacity

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On any motion in fine-only misdemeanor case, court shall determine whether probable cause exists to believe that a child lacks the capacity to understand the criminal proceedings or to assist in his own defense and is unfit to proceed, or lacks substantial capacity to appreciate the wrongfulness of the child's own conduct or to conform his conduct to the requirement of the law

- ❖ Upon such a finding, court may dismiss the complaint, which State can appeal

*Penal Code § 8.08*

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# Waiver & Transfer

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General Rule: most criminal offenses filed against a child are to be transferred to juvenile court

EXCEPTIONS:

- ❖ Perjury
- ❖ Traffic Offenses
- ❖ Fine-Only Misdemeanors
- ❖ Violation of Penal Ordinance or Order

*Family Code § 51.08(a)*

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# Waiver & Transfer

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Courts should also waive original jurisdiction and transfer fine-only offenses, other than traffic offenses or violations of penal ordinances of political subdivisions, shall waive original jurisdiction and refer the child to juvenile court if:

- ❖ It is a sexting offense (Penal Code 43.261) that is fine-only; OR
  - ❖ The child has previously been convicted of:
    - ❖ 2 or more fine-only misdemeanors (not traffic);
    - ❖ 2 or more violations of penal ordinances of a political subdivision (not traffic); OR
    - ❖ 1 or more of each type of the above;
- AND
- ❖ May refer the child to juvenile court in other cases (where not mandatory)

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# Mandatory Waiver and Transfer

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- ❖ MUST TRANSFER:
  - ❖ Sexting against a child (under 17)
  - ❖ Previous complaint dismissed for lack of capacity
- ❖ General Rule: 3 Strikes, You are OUT!
  - ❖ 2 or more misdemeanors
    - ❖ Punishable by fine only
    - ❖ Other than traffic
  - ❖ Do not count DSCs, Deferred, or Teen Court cases → not “convictions” for this purpose

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# Juveniles in Justice Courts

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Justice Courts generally see juveniles in criminal fine-only cases, but the judge may act as a magistrate in other circumstances:

❖ Juvenile Magistration

❖ Juvenile Detention Hearings

❖ Admonishing Juveniles Prior to a Written or Recorded Statement

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# Is Juvenile Magistration the Same as Adult Magistration?

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IT IS SIMILAR, BUT THERE ARE ADDITIONAL PROCEDURES  
TO FURTHER PROTECT THE RIGHTS OF THE CHILD.

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# Juvenile Detention

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## Children in Custody (fine-only)

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Generally, a person may not be taken into secured custody for offenses alleged to have occurred before the individual's 17<sup>th</sup> birthday

For fine-only misdemeanors:

A child may be released to a parent, guardian, custodian, or other responsible adult upon their promise to bring the child before the juvenile court when requested.

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## Children in Custody (fine-only)

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*Code of Criminal Procedure Art 45.058:*

If not released on fine-only misdemeanor, must be taken only to a place of **nonsecure custody** unless the child is taken before a justice or municipal court

A place of nonsecure custody for children must be an unlocked, multipurpose area that is not part of a secure detention area or a residential facility

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# What About Non- Fine-Only Offenses?

A child may be taken into custody:

- ❖ Pursuant to an order of the juvenile court;
- ❖ Pursuant to the laws of arrest;
- ❖ By a Law enforcement officer if there is probable cause (PC) to believe that the child has engaged in:
  - ❖ Conduct that violates a penal law of this state or a penal ordinance of any political subdivision of this state;
  - ❖ Delinquent conduct or CINS; or
  - ❖ Conduct that violates a condition of probation imposed by the juvenile court

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# What About Non-Fine- Only Offenses? (continued)

*A child may be taken into custody (continued...)*

- ❖ By a probation officer if PC to believe that probation violation
- ❖ Pursuant to a directive to apprehend; or
- ❖ By probation officer if PC to believe child violated condition of release.

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## What is a Juvenile Detention Hearing?

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- ❖ A hearing to determine whether there is probable cause to believe a child engaged in delinquent conduct or conduct indicating a need for supervision (CINS) and may be held in detention pending a juvenile court of the charges against the child.

*Family Code § 53.01*

- ❖ This is required when a child is taken into custody and not released administratively by and intake officer at a detention facility.

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## What Judge Conducts Detention Hearings?

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Generally, these hearings will be conducted by the juvenile court judge.

However, if the juvenile court judge or any designated alternate is unavailable, any magistrate, INCLUDING A JUSTICE OF THE PEACE, may conduct a detention hearing.

*Family Code § 53.04*

*\*\*If a magistrate presides over a detention hearing, they must first make a determination of unavailability of the juvenile court judge. This must be done for any detention hearing, even if it is in the same case as one previously presided over by the magistrate.*

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## Detention Hearings – When??

- ❖ “Promptly”
- ❖ Not later than the 2<sup>nd</sup> working day after the child is taken to custody
- ❖ If the child is taken into custody on a Friday or Saturday, the detention hearing must be held on the first working day after the child was taken into custody.

*Family Code § 54.01*

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## What if the Child is Detained in a Place Other Than a Juvenile Detention Center?

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- ❖ If the child is detained in a county jail or other facility (because a certified juvenile detention center is unavailable):
  - ❖ the detention hearing must be within 24 hours (excluding weekends and holidays) after the child was taken into custody

*Family Code § 54.01*

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## What if the Child is a Status Offender?

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- ❖ The detention hearing for a status offender must be held before the 24<sup>th</sup> hour after the time the child arrived at the detention facility (excluding hours of a weekend or holiday).

*Family Code §§ 54.011, 53.01.*

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## Review: Who is a Status Offender?

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- A. A child who has had good behavior in a detention facility in the past.
- B. Any defendant who has been convicted of 3 or more non fine-only misdemeanors.
- C. A child who is accused, adjudicated, or convicted for conduct that would not, under state law, be a crime if committed by an adult.
- D. None of the above.

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# Right to Counsel

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- ❖ Prior to the first detention hearing, the court must notify the child and their parents of the child's right to legal counsel.
- ❖ If the court determines that the child's family is indigent, the court **MUST** appoint an attorney prior to the initial detention hearing.
- ❖ The child's attorney must be present at all subsequent detention hearings, unless the hearings are waived by the child and their attorney.

*Family Code §§ 54.01, 51.09*

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## Pop Quiz!

What is the role of a Guardian Ad Litem?

- A. The guardian ad litem acts as the legal representative for the child who is the subject of a lawsuit.
- B. The guardian ad litem is an attorney who is in charge of a child in a lawsuit.
- C. The guardian ad litem can be a lawyer or a qualified non-lawyer.
- D. Both A & C.

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# Notice of the Hearing

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- ❖ Reasonable Notice, either oral or written, must be given to the child and the parents, guardian, or custodian of the child (if they can be located)
- ❖ If no parents or guardian is present, the court MUST appoint a lawyer or guardian ad litem for the child.

*Family Code § 54.01*

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# What Happens at the Hearing??

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# When Should the Court Order the Child to be Detained?

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## If the Court finds:

- The child is likely to abscond or be removed from the jurisdiction of the court;
- Suitable supervision, care, or protection for the child is not being provided by a parent, guardian, custodian, or other person;
- The child has no parent, guardian, custodian, or other person able to return him to the court when required;
- The child may be dangerous to himself or may threaten the safety of the public if released; or
- The child has previously been found to be a delinquent child or has previously been convicted of a penal offense punishable by a term in jail or prison and is likely to commit an offense if released.

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# Conditions of Release

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- ❖ The court may order conditions reasonably necessary to ensure the child's later appearance in court
- ❖ Conditions must be in writing & a copy given to the child
- ❖ If the child is released to an adult, the court must condition the release on an agreement that the adult will later make sure the child comes back to court or be subject to contempt
- ❖ The judge can order the parent, who is present at the hearing, to perform certain acts or omissions to assist the child in complying with the conditions of release.
  - ❖ These conditions should also be in writing & a copy given to the parent

*Family Code § 54.01, 53.02*

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## Can the Child's Statements at a Detention Hearing be used at a Later Hearing?

NO! No statement made by the child at the detention hearing shall be admissible against the child at any other hearing.

*Family Code § 54.01*

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## How Long does a Detention Order Last?

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- ❖ Until the conclusion of the disposition hearing, but in no event more than 10 days
- ❖ New, subsequent detention orders can be made after another detention hearings
  - ❖ These hearings can be waived
  - ❖ In a county with no certified juvenile detention center, subsequent detention orders can last 15 days

*Family Code § 54.01*

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# Why does the Court Need to Hold Detention Hearings so Often?

- ❖ To determine if there are still sufficient grounds for detention of the child.
- ❖ Basically, we only want to keep children detained if they are **dangerous** or there is **no better place for them** to be.

*Family Code § 54.01*

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# Can a Detention Hearing be held via Skype or Another Video Chat Service?

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YES!

- ❖ The recording must:
  - ❖ Be agreed to by the child and the child's attorney;
  - ❖ Allow the parties to cross-examine witnesses;
  - ❖ Allow for two-way communication of image and sound among the child, the court, and the other parties at the hearing;
  - ❖ Be recorded.

*Family Code § 54.012*

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# Keeping the Recording

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- ❖ The recording must be preserved until the earliest of:
  - ❖ 91st day after the date of the recording (misdemeanor)
  - ❖ 120th day after the date of the recording (felony); or
  - ❖ The date on which the adjudication hearing ends.
- ❖ An attorney for the child may obtain a copy of the recording on payment of the reasonable costs of reproducing the copy.

*Family Code § 54.012*

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## Waiver of Detention Hearing



The initial detention hearing  
**CANNOT** be waived



Subsequent detention hearings  
may be waived by the child &  
their attorney

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# Juvenile Warnings

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## Warning of Juvenile's Rights

A juvenile brought before a magistrate must receive a warning of the rights below:

- ❖ The child may remain silent and not make any statement at all and any statement that the child makes may be used in evidence against the child.
- ❖ The child has the right to have an attorney present to advise the child either prior to any questioning or during the questioning.
- ❖ If the child is unable to employ and attorney, the child has the right to have an attorney appointed to counsel with the child before or during any interviews with peace officers or attorneys representing the state.; and
- ❖ The child has the right to terminate the interview at any time.

*Family Code § 51.095*

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# Juvenile Statements

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A Child **MUST** be Brought Before A Magistrate to Ensure they Understand Their Rights Before Giving a Written or Oral Statement to Law Enforcement

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# Written Statements

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For a written statement to be admissible in a future proceeding:

1. The magistrate must give the warnings in FC 51.095 prior to the making of the statement.
  - The child must knowingly and voluntarily waive these rights
2. The statement must be signed in the presence of a magistrate by the child with no law enforcement or prosecuting attorney present.
  - The magistrate may allow a bailiff (who is not carrying a weapon) to be present if it is necessary for the personal safety of the magistrate or court personnel.
3. The magistrate must be fully convinced that the child understands the nature and contents of the statement and that the child is signing voluntarily
4. The magistrate must sign a written statement verifying the requirements have been met

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# Oral Statements

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The Statement is made:

1. Orally, and the child makes a statement of facts or circumstances that are true and tend to establish the child's guilt
2. The statement was res gestae of the delinquent conduct or the CINS or of the arrest;
3. The statement is made in open court at the child's adjudication hearing, before a grand jury for delinquent conduct, or at a preliminary hearing (other than a detention hearing)

Such as the finding of stolen property or a weapon with which the child states the offense was committed.

"This was all Billy's idea!"

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# Oral Statements

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The statement is made:

1. While the child is in a detention facility or other place of confinement; or
2. While the child is in the custody of an officer; or
3. During or after interrogation (if in DFPS custody and suspected to have violated a penal law of TX)

AND

The statement is recorded with video

AND...[next slide]

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# Oral Statements Continued...

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- ❖ Before the statement, AND ON THE RECORDING, the child is given the warnings, the child knowingly, intelligently, and voluntarily waives each right stated in the warning;
- ❖ Each voice on the recording is identified; and
- ❖ Not later than the 20<sup>th</sup> day before the date of the proceeding, the child's attorney is given a complete and accurate copy of each recording of the child

*Family Code § 51.095*

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## Free & Voluntary

### Totality of the Circumstances

#### Some factors considered are:

- The child's age, intelligence, maturity level, and experience in the system;
- The length of time left alone with the police;
- The absence of a showing that the child was asked whether they wanted to assert any rights;
- The isolation from family and friendly adult advice;
- The failure to warn the child in his or her language; and
- The length of time before the child was taken before a magistrate and warned.

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## What if the Child's Age is Unknown?

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- ❖ Best practice is to follow the procedure in Family Code § 51.059, because if the interrogation leads to the discovery of a serious offense, and the child is not 17, then the evidence could become inadmissible.

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# Forms

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TJCTC is currently working on updating our forms.

TCMEC currently has updated forms (2019):

<https://www.tmcec.com/programs/judges/magistrates/>

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# Resources

Check out the additional resources:

<https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/juvenile-justice/JuvenileJusticeHandbook.pdf>

<https://www2.tjd.texas.gov/publications/legal/texas-juvenile-law-9.pdf> (Magistrate's Role starts on pg 426)

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Download a copy of the materials from this webinar.



Fill out your evaluation!!



Post any questions on the Legal Board.

# Don't forget!