

No. 16-0468

IN THE SUPREME COURT OF TEXAS

IN THE MATTER OF J.G.,
Petitioner

PETITION FOR REVIEW

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STATEMENT OF THE CASE

- Nature of the case:** This is an accelerated appeal from a juvenile court order waiving jurisdiction and transferring the case to criminal district court. TEX. FAM. CODE ANN. § 56.01(c)(1)(A), (h) (Vernon Supp. 2015).
- Trial judge:** Hon. John Phillips
- Trial court and county:** 314th Juvenile District Court, Harris County
- Disposition by trial court:** The court waived its exclusive, original juvenile jurisdiction, and transferred the case to the Harris County Criminal District Court.
- Parties in the court of appeals:**
- Appellant:** J.G.
- Appellee:** State of Texas
- Court of Appeals District:** First Court of Appeals, Houston
- Participating justices:** Chief Justice Sherry Radack, Justice Laura Carter Higley, Justice Evelyn Keyes (author)
- Citation:** *In the Matter of J.G.*, ___ S.W.3d ___, No. 01-15-01025-CV, 2016 WL 2587118 (Tex. App. – Houston [1st Dist.] May 5, 2016).
- Disposition by appeals court:** The court of appeals affirmed, holding that: 1) the statute under which the juvenile judge waived jurisdiction was constitutional as applied to J.G.; and 2) the judge did not abuse his discretion because the evidence was sufficient to support the waiver and transfer. No motions for rehearing or en banc reconsideration were filed.

STATEMENT OF JURISDICTION

The Court has jurisdiction over this case under TEX. GOVT. CODE §§ 22.001(a) (3) and (6). First, the case involves the construction of TEX. FAM. CODE § 54.02(j), a section of the Juvenile Justice Code that governs juvenile court decisions to waive jurisdiction and transfer certain cases to adult criminal court. Second, this is the first case to reach this Court since the Legislature authorized accelerated interlocutory appeals from juvenile court waivers of jurisdiction. It presents important questions of constitutional law concerning how juvenile courts decide to transfer to criminal court persons accused of committing offenses as juveniles. These questions, which are bound to recur with more frequency now that interlocutory appeal is permitted by the Juvenile Justice Code, need to be answered by this Court.

ISSUES PRESENTED

- ISSUE ONE: The Court of Criminal appeals recently held, in Moore v. State, that the state is entitled to only one chance to prove that a juvenile court should transfer a person to criminal court. The COA erred by construing the statute to permit the state two chances to certify.
- ISSUE TWO: TEX. FAM. CODE § 54.02(j) is unconstitutional as applied in this case.
- ISSUE THREE: The court of appeals erred when it held that the State's evidence was sufficient and the juvenile court did not abuse its discretion when it waived jurisdiction over J.G.

STATEMENT OF FACTS

This is the second time J.G. has been transferred from juvenile court to criminal district court for an aggravated robbery that occurred when he was 16 years old. The original transfer and adult conviction were reversed in light of *Moon v. State*, 451 S.W.3d 28 (Tex. Crim. App. 2014). See [J.G.] v. State, 471 S.W.3d 1 (Tex. App. – Houston[14th Dist.] 2014, no pet.). Now, J.G. is 21 years old.

The First Court of Appeals correctly stated the nature of this case, except:

Before the juvenile court hearing on the State's second motion to waive jurisdiction and transfer J.G. to adult court, the judge ordered the juvenile probation department to re-evaluate J.G. and prepare an updated certification evaluation for the court.¹ The updated evaluation presented a very different, and much more positive, picture of J.G. than the original evaluation. *See* 5 RR at Exhibit 2, Probation Report. The court of appeals did not even mention the updated evaluation in its opinion, except to note that the juvenile court "ordered a new round of psychological and intellectual evaluations of appellant." *In Matter of J.G.*, ___ S.W.3d ___, 2016 WL 2587118, No. 01-15-01025-CV (Tex. App. – Houston [1st Dist.] May 5, 2016).

1. J.G.'s first juvenile court transfer hearing ended with a boilerplate order waiving juvenile jurisdiction without individualized findings.

¹ The juvenile code requires a court to order a complete psychiatric and psychological evaluation before the court considers waiving its jurisdiction over a child under age 18. TEX. FAM. CODE § 54.02(d). There is no such requirement when a court considers waiving juvenile jurisdiction over persons who are over 18 but are accused of committing offenses when they were still children.

The State alleged that J.G. committed the offense of aggravated robbery when he was 16 years old, even though the evidence showed that he was merely the driver for an adult male who robbed a man at gunpoint (2 RR at 26). After a hearing, the juvenile court found probable cause to believe that J.G. had committed the offense. Using the form order that was standard in the Harris County juvenile courts at the time, the judge filled in the blanks to waive the court's jurisdiction over the case, and ordered J.G. transferred to criminal court (CR at 44).

2. J. G.'s first adult proceeding ended with a sentence of eight years' confinement in the Texas Department of Criminal Justice – Institutional Division.

After the first transfer order was entered in 2012, J.G.'s case was assigned to the 338th District Court of Harris County. At his first setting with a court-appointed lawyer, he pleaded guilty to aggravated robbery. The criminal judge assessed punishment of eight years to serve in TDCJ.

J.G. appealed, and the Fourteenth Court of Appeals reversed his conviction for lack of subject matter jurisdiction in the adult court, in accordance with *Moon*. See [J.G.], 471 S.W.3d at 1. In fact, J.G.'s case was the first juvenile transfer appeal to be based on *Moon*.

3. J.G. received no education or other services in the Harris County Jail or TDCJ, even while he was still under age 18.

J.G.'s time in the Harris County Jail included months in solitary confinement, because until he turned 18, he was too young to be placed in the jail's general

population. The jail simply cannot house juveniles in safe conditions. In particular, it does not comply with the federal Prison Rape Elimination Act of 2003. *See* Appendix at E: Cindy George, *County May Relocate Jailed Teens*, Houston Chronicle, Sept. 30, 2016, at A3.

J.G. served the balance of his time in TDCJ. He signed up on a waitlist to enroll in a prison GED class, but an opening never became available. When he inquired about attending Alcoholics Anonymous meetings, he was told that his prison job in the kitchen conflicted with the meeting time. *See* 5 RR at Ex. 2, Certification Evaluation, Respondent's Response to Rehabilitation Efforts).² No other services were offered to him.

4. After J.G. got out of prison, he was a hard-working, law-abiding young man.

Once J.G. was freed on bond after his first case was reversed, he started work immediately in his father's construction business. Soon, he found his own job as a house painter. He worked full time, 5-6 days a week, and his income helped support his mother and sister. Further, he committed no offenses, stayed away from gangs, attended Alcoholics Anonymous meetings, and was taking steps to return to school to earn a GED (5 RR at Exhibit 2, Psychological Evaluation at p. 12). He also volunteered to participate in the ReVision program, which provides long-term mentoring, education,

² The exhibits from the juvenile court are not Bates numbered, so it is not possible to give the Court pinpoint citations to the record.

and life-skills training for youths in the Harris County juvenile justice system (5 RR at Ex. 2, Psychiatric Evaluation – CERT at p. 8).

5. **After the remand, the juvenile court ordered J.G. back to adult court as if he were a violent criminal who posed a danger to the community.**

At the recertification hearing, J.G.'s counsel argued that further prosecution in adult court and further imprisonment would not serve the interests of the community, the justice system, or J.G. (2 RR at 70). In the updated evaluation report, the juvenile court had ample information about J.G.'s successful release back into the community. In addition, the defense offered J.G.'s pen packet from TDCJ into evidence. It showed that J.G. had zero disciplinary issues while in TDCJ.

Ultimately, however, the judge adopted the State's Findings of Fact and Conclusions of Law, which focused on the original certification evaluation from 2012, J.G. was 16 years old and first faced transfer to adult court (Appendix at C). Written in 2012, it revealed a troubled youth with a string of minor juvenile offenses such as trespassing and possessing marijuana on school grounds, who did poorly on juvenile probation when released from detention. After the juvenile judge entered his order waiving jurisdiction, J.G. returned to adult criminal court.

SUMMARY OF THE ARGUMENT

Texas' appellate courts are being asked with ever-increasing frequency to review juvenile court decisions that waive jurisdiction and transfer children to adult court. This is due to two major shifts in the juvenile law landscape over the past two years:

1) The Court of Criminal Appeals handed down a blockbuster opinion in *Moon v. State*, 451 S.W.3d 28 (Tex. Crim. App. 2014), which announced that juvenile courts must make individualized determinations that the evidence supports a transfer to adult court, and reminded juvenile courts that waiver of jurisdiction is supposed to be “the exception, not the rule...” *Id.* at 36. Further, the Court instructed appellate courts to conduct legal and factual sufficiency reviews that are limited to the evidence specifically cited in the transfer orders, and noted that the juvenile courts should take pains to “show [their] work” for appellate courts to review. *Id.* at 49.

2) In September, 2015, a new law that permits accelerated direct appeals of juvenile court waivers of jurisdiction went into effect. *See* TEX. FAM. CODE § 56.01(c)(1)(A)(h).

Yet as the number of appeals is increasing, the appellate courts lack a sound framework within which to resolve the important constitutional issues that have arisen, such as those presented by this case. Granting review would give the Court an opportunity to establish that framework, building upon the foundation laid by the Court of Criminal

Appeals in *Moon* and, more recently, in *Moore v. State*, ___ S.W.3d ___, No. PD-1534-14, 2016 WL 6091386 (Tex. Oct. 19, 2016)

Once the State has failed to prove that a person should be transferred from juvenile to criminal court, the State is not entitled to a do-over. A person should not have to face a second hearing at which the State gets another chance to prove that he should be subject to an adult trial and punishment. As *Moore* instructs, the correct remedy when the State does not satisfy its burden of proof is to vacate the criminal court judgment and dismiss the case for want of jurisdiction. *Id.*

The difference between *Moore* and J.G.'s case is that Moore was already over 18 years old at the time of his transfer hearing. J.G. was still a "child," as defined by the Family Code, when his first transfer hearing was held. By the time of the second hearing, however, he had reached age 18. Still, there is no constitutionally sound justification for the appellate courts to bar re-certification of the respondent in Moore but permit it for J.G.

Further, the juvenile court proceedings on remand were fundamentally unfair. That is because Sect. 54.02 changes the rules in the State's favor if a person manages to win reversal of a transfer order. In the meantime, as the indigent juvenile sits in the county's adult jail, he loses the rehabilitative and educational opportunities of the juvenile probation system. Section 54.02(j) violates multiple constitutional guarantees. All that were raised at the court of appeals are asserted again by this petition, but due to space limitations, only a few are discussed here. Section 54.02 violates a defendant's

right to due process equal protection, and the ban against double jeopardy. as applied to J.G. and others who have wrongfully served adult prison sentences and then are returned to juvenile court, but can no longer receive juvenile services.

Even if Section 54.02(j) were constitutional in J.G.'s case, the Court still should grant this petition to correct the lower court's erroneous review of the sufficiency of the State's evidence at the re-certification hearing. The court failed to review whether the evidence was both legally and factually sufficient to support the juvenile judge's findings, as *Moon* requires.

ARGUMENT

“It is clear beyond dispute that the waiver of jurisdiction is a ‘critically important’ action determining vitally important statutory rights of the juvenile. ... The statutory scheme makes this plain. The Juvenile Court is vested with ‘original and exclusive’ jurisdiction’ of the child. This jurisdiction confers special rights and immunities.” *Kent v. United States*, 383 U.S. 541, 557 (1966) (construing District of Columbia’s juvenile statute).

ISSUE ONE: According to the Court of Criminal Appeals’ new opinion in *Moore v. State*, the State is allowed only one chance to prove that the juvenile court should waive jurisdiction. Because juvenile court and the appellate court in J.G.’s case permitted a second certification after remand, their actions violated J.G.’s constitutional rights to due process, equal protection, and to be protected from double jeopardy.

The Juvenile Justice Code permits a juvenile court to waive its exclusive jurisdiction in two circumstances:

- 1) When there is probable cause to believe that a “child” (generally, a respondent under age 18) has committed one of a number of felony offenses listed in the statute (*See* TEX. FAM. CODE § 54.02(a)); or
- 2) When there is probable cause to believe that a “person” (a respondent who is 18 or older) committed offense while under 18 (TEX. FAM. CODE § 54.02(j)).

After *Moore*, the law is now settled that in the latter case, the State gets only one chance to prove its case for transfer to criminal court. J.G. asks this Court to decide whether, in the former case, the Constitution permits the State to try more than once to prove that a respondent should be transferred to adult court. This question was left open in *Moon* because it had not been raised by the parties. *See Moon*, 451 S.W.3d at 52, n. 90.

It has long been the law in Texas that juvenile court jurisdiction over a person who has turned age 18 is limited to two questions:

- 1) whether to dismiss the case; or
- 2) whether to transfer the case to adult court, provided that the State satisfies its burden to prove the transfer factors enumerated in Sect. 54.02(j) by a preponderance of the evidence.

See In Re N.J.A., 997 S.W.3d 554, 556 (Tex. 1999). In *N.J.A.*, this Court held that a juvenile court’s jurisdiction does not include the authority to adjudicate a person who has reached 18 by the time of her trial. In *Moore*, the Court of Criminal Appeals held that *N.J.A.*’s limits on juvenile jurisdiction apply to certification decisions, as well. *Moore*, slip. op. at 9. When the State does not prove all five factors required by Section 54.02(j), the juvenile court lacks jurisdiction to either adjudicate the person (according to *N.J.A.*) or transfer the person to criminal court (according to *Moore*).

There is no exception to this limit on juvenile court jurisdiction in the Juvenile Justice Code, the Government Code, or the Texas Constitution. Re-certification cases like J.G.'s, then, should be subject to the same limitations, and the Court should grant review to make this clear to the lower courts.

ISSUE TWO: TEX. FAM. CODE § 54.02(j) is unconstitutional as applied to persons like J.G., who are remanded back to juvenile court after reversal of a certification order on appeal.

A statute may be held unconstitutional as applied when it operates to deprive an individual of a protected right, although its general validity is beyond question. *See Boddie v. Connecticut*, 401 U.S. 371, 379 (1971). This petition challenges TEX. FAM. CODE § 54.02(j) as applied in J.G.'s case – that is, when a juvenile court has waived its jurisdiction over a child, who in the course of time as his case moves through the court system, turns 18 years old before his case is reversed and remanded back to the juvenile court.

The current practice of recertifying persons whose original certifications were reversed violates “fundamental conceptions of justice which lie at the base of our civil and political institutions and which define the community’s sense of fair play and decency.” *See U.S. v. Lovasco*, 431 U.S. 783, 790 (1977)(internal quotation marks and citations omitted). When applied to persons on remand, Section 54.02(j) is rigged. It changes the rules in the State’s favor after the State loses the first round of appeals. By then, generally, the defendant has been wrongfully deprived of all the educational and

psychosocial programs that would have been available to him in the juvenile justice system. He can never regain those opportunities. The community, too, loses the benefit of rehabilitation and education of an at-risk youth. Virtually all young people will be released back into the community at some point in the future. If all they have learned during their crucial late-teens/early 20s has come behind the bars of adult prisons, from adult offenders, the community is at risk, as well.

A. TEX. FAM. CODE § 54.02(j) is fundamentally unfair because it tips the scales in the State’s favor on remand if the State loses its first appeal.

For children under age 18, a juvenile court may waive jurisdiction if it finds that:

- (1) the child is alleged to have committed a felony;
- (2) the child was fourteen years or older (if the alleged offense is, as in this case, a first degree felony); and
- (3) the court determines there is probable cause to believe:
 - (a) the juvenile committed the offense alleged; and
 - (b) because of the seriousness of the offense alleged or the background of the juvenile, the welfare of the community requires criminal proceedings.

TEX. FAM. CODE § 54.02(a). The Legislature further requires the juvenile court to consider:

- (1) whether the alleged offense was against person or property;
- (2) the sophistication and maturity of the child;
- (3) the record and previous history of the child; and
- (4) the prospects of adequate protection of the public and the likelihood of the rehabilitation of the child by use of the

procedures, services and facilities currently available to the juvenile court.

TEX. FAM. CODE § 54.02(f).

J.G.'s updated psychological evaluation described him as “a young adult who has gained some level of insight since he was last in the jurisdiction of the Harris County Juvenile Probation Department. He has demonstrated an ability to conduct himself as a pro-social individual by procuring employment and refraining from substance abuse. ...” (5 RR at Ex. 2, Probation Report; Psychological Evaluation p. 12).

TEX. FAM. CODE § 54.02(j) makes such considerations utterly irrelevant. Once the juvenile court finds that the accused fits the statute's age parameters, the only remaining factors for the judge to consider are procedural (whether there has been an adjudication, whether the state used due diligence, etc.). The judge also must determine whether there is probable cause to believe the defendant committed the offense. *Id.*

Currently, a person who was wrongfully denied the benefits of the juvenile justice system has a hollow victory upon reversal, because he almost certainly will be re-certified if the State requests it. He gets a procedure that looks like a hearing, but in fact does not provide any meaningful due process. All the growth and rehabilitation he has accomplished will not shift the balance even slightly in his favor.

B. The juvenile judge purported to consider the factors for transfer of juveniles under TEX. FAM. CODE § 54.02 (a) and (f), but he did not weigh the mitigating evidence in J.G.'s favor. This compounded the constitutional harm.

The juvenile court judge expressly went beyond consideration of the bare subsection (j) factors to consider the subjective factors under subsections (a) and (f). This was not a problem in theory – a juvenile judge has discretion to consider the factors he considers relevant. However, the findings and conclusions in this case read as if J.G. had been frozen in time as a troubled 16-year-old. The judge gave no consideration to the updated certification evaluation, even though the judge himself ordered it, and even though it was performed by the same mental health experts who conducted the 2012 evaluation that the judge gave such weight.. Despite the evidence to the contrary, the judge found that J.G. had not been rehabilitated, and that “it [was] not in the best interest of society, the justice system, and the community that the Court exercise any discretion, if such discretion exists, to dismiss this case.” Neither the order waiving jurisdiction nor the findings and conclusions pointed to *any* evidence that supported these determinations.

The lower courts cannot paper over the unconstitutionality of Sect. 54.02(j) by papering over it with a claim that the juvenile judge actually considered, in any meaningful way, the Sect. (a) and (f) factors.

C. The court of appeals failed to follow the clear instructions in *Moon v. State* for review of certification decisions. It did not review the factual and legal sufficiency of the State’s evidence.

The court of appeals failed to conduct any factual sufficiency review of the evidence, though *Moon* expressly requires both legal and factual sufficiency review of the evidence presented at a juvenile certification hearing. *See Moon*, 451 S.W. 3d at 45-

6. Nowhere does the appellate court's opinion weigh J.G.'s evidence against the State's evidence.

When conducting review for factual sufficiency, a court of appeals must examine, consider, and weigh all of the evidence that supports or contradicts the jury's determination. *See Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 242 (Tex.2001). The First Court of Appeals failed to do so.

The appellate court acknowledged that the juvenile court considered the Sect. 54.02(a) and (f) factors as well as the Sect. 54.02(j) factors. The reviewing court concluded that this was the answer to the due process issues before it: "In this case, therefore, the juvenile court essentially considered *all* of the relevant statutory factors for waiver of jurisdiction that the Legislature has specifically enumerated in section 54.02, despite the age-based distinction between subsections (a) and (f) and subsection (j). We therefore conclude that section 54.02(j), as applied to appellant in this case, did not deprive appellant of due process and equal protection." *J.G.*, Op. at *9. While the court's observation is correct, its conclusion is not.

D. The court of appeals denied J.G. his right to due process by denying him meaningful review of the evidence.

The court of appeals committed its own constitutional law violation by failing to: 1) look at the evidence specifically cited by the juvenile court; and 2) determine if that evidence was sufficient to support the court's waiver of jurisdiction.

If a state grants a right to appeal, the process of appellate review must be consistent with the requirements of due process, due course of law, and equal protection. *See Griffin v. Illinois*, 351 U.S. 12, 18 (1956). *See, also*, U.S. CONST. AMENDS. V, XIV; TEX. CONST. ART. 1 § 19. Above all, appellate review must be meaningful. “[A] distinction between (1) a State that denies permission to raise [a] claim on direct appeal and (2) a State that in theory grants permission but, *as a matter of procedural design and systemic operation*, denies a meaningful opportunity to do so is a distinction without a difference.” *Trevino v. Thaler*, 133 S.Ct. 1911, 1921 (2013) (emphasis added) (discussing Texas’ procedures for reviewing claims of ineffective assistance of counsel in criminal cases).

As a result of Sect. 54.02(j)’s “procedural design and systemic operation” in cases such as J.G.’s, the statute violates the constitutional guarantees of due process, due course of law and equal protection.. This Court should grant review now that accelerated appeals have begun making their way through the system. Otherwise, the intermediate appellate courts may continue to deny meaningful review of certification decisions under Sect. 54.02(j).

- 1 The court of appeals’ conclusion that Sect. 54.02(j) did not violate J.G.’s right to protection from double jeopardy was based on a demonstrably incorrect premise: that the reversal of the first transfer order was not due to insufficient evidence. Therefore, the conclusion was erroneous.
2. The court of appeals’ holding that Sect. 54.02(j) is not an ex post facto law as applied here, because the transfer decision is not an adjudication or a conviction, was error.

3 The court of appeals' approval of the juvenile court's reliance on J.G.'s prior juvenile record and reports, without consideration of the mitigating evidence in J.G.'s favor, led the court to conclude, erroneously, that Section 54.02(j) did not result in a cruel and unusual punishment for J.G.

ISSUE THREE: The State's evidence was not sufficient to give the juvenile court jurisdiction to transfer J.G. back to adult court. The juvenile court was required to dismiss the case.

Although this petition raises several issues of insufficient evidence, only one is discussed here, due to word-limit constraints.

A. As a question of first impression, if the State proves that a child was only a party to an offense, is that sufficient evidence that he "committed" the offense within the meaning of the Juvenile Justice Code?

It is undisputed that J.G. was not the gunman in the alleged aggravated robbery; he was only the driver for the 21-year-old who actually committed the offense (2 RR at 27).

According to TEX. PENAL CODE § 29.03(a), a person *commits* the offense of aggravated robbery "if he commits robbery ... and he (1) causes serious bodily injury to another; [or] (2) uses or exhibits a deadly weapon" According to the law of parties, a person is *criminally responsible* for an offense *committed* by the conduct of another if "acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense." TEX. PENAL CODE § 7.02(a)(2)(emphasis added).

TEX. FAM. CODE § 54.02(j) does not authorize a juvenile judge to transfer a person who may be "criminally responsible" – that is, a party and not the principal

actor. Rather, the judge must find that there is probable cause that the person *committed* the alleged offense, according to the statute's plain language. If the Legislature had intended otherwise, it would have included criminal responsibility for an offense, as well as commission of an offense, in Section 54.02(i). *See* Robert O. Dawson, *Texas Juvenile Law*, 8th ed., p. 588: "The Code of Criminal Procedure includes the situation in which, although the defendant did not personally use a deadly weapon, he or she was a party to the offense and 'knew that a deadly weapon would be used or exhibited' during the offense or immediate flight therefrom. ... *However, no similar amendment was made in the Family Code* deadly weapon provision." (emphasis added).

In the Juvenile Justice Code, the distinction between the principal actor and someone who is merely a party is an important one. A juvenile court or jury cannot make a finding that a juvenile used or displayed a deadly weapon during an offense unless it finds that he was the actual party using the weapon. *See In the Matter of A.F.*, 895 S.W.2d 481, 486 (Tex. App. – Austin 1995, no writ). "For a determinate sentence ..., parole eligibility rules for ... cases in which a deadly weapon finding was made were changed [in 1993]. Under these rules, such an offender must serve one-half of the sentence without good conduct credit, or 30 years, whichever is less, but in no event less than two calendar years, to become eligible for parole." This controls how soon a juvenile serving a determinate sentence will be eligible for parole. Dawson at p. 611 (internal citation omitted).

Because J.G. was guilty, if at all, only as a party to the aggravated robbery, he could not be found to have “committed” the offense, as required by the Juvenile Justice Code. The juvenile court and the court of appeals failed to recognize the distinction between the juvenile law’s nomenclature and the language the Legislature uses in the Penal Code. This Court should grant review to resolve this important question of first impression.

- B. The State did not satisfy its burden to prove that after due diligence, it was not practicable to proceed in juvenile court because the previous transfer order was reversed.
- C. Contrary to the court of appeals’ assertion, the record shows that the State did not prove that no adjudication of the alleged offense has been made.

PRAYER

Petitioner respectfully requests that the Court grant this petition and, after briefing and argument of the parties, reverse the court of appeals and dismiss this case with prejudice.

Respectfully submitted,

Alexander Bunin
Chief Public Defender
Harris County Texas

/s/ Cheri Duncan

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CERTIFICATE OF SERVICE

I certify that a copy of this brief was served electronically on the Harris County District Attorney's Office on October 31, 2016.

/s/ Cheri Duncan

Cheri Duncan

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with Rule 9.2, TEX. R. APP. PROC. It was prepared on a computer using 14-point Garamond type. The sections pertinent to the rule contain 4,348 words.

/s/ Cheri Duncan

Cheri Duncan

No. 16-0468

IN THE SUPREME COURT OF TEXAS

IN THE MATTER OF J.G.,
Petitioner

APPENDIX

ATTACHMENT A: ORDER OF THE TRIAL COURT

ATTACHMENT B: FINDINGS AND CONCLUSIONS

ATTACHMENT C: OPINION AND JUDGMENT

ATTACHMENT D: TEXT OF CONSTITUTIONS AND STATUTES

TEX. FAM. CODE § 54.02

TEX. PENAL CODE § 7.02

TEX. PENAL CODE § 29.03

TEX. CONSTIT. ART. I § 19

U.S. CONSTIT. AMEND. V

U.S. CONSTIT. AMEND. XIV

ATTACHMENT E: HOUSTON CHRONICLE, SEPTEMBER 30, 2016

“COUNTY MAY RELOCATE JAILED TEENS.”

ALEXANDER BUNIN
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COUNSEL FOR PETITIONER

PETITION NO. 2012-00331J

IN THE MATTER OF

J [REDACTED] G [REDACTED],

Respondent

§ IN THE 314th DISTRICT COURT

§

§ OF

§

§ HARRIS COUNTY, TEXAS

ORDER NUNC PRO TUNC TO WAIVE JURISDICTION

On the 2nd day of November 2015, hearing was held in the above styled and numbered cause under Section 54.02 of the Family Code, on the issue of waiver of jurisdiction and discretionary transfer to a criminal court. Prior the hearing, the Court ordered and the juvenile Respondent and his attorney attended a diagnostic study, social evaluation, and full investigation of the juvenile Respondent and his circumstances. The Court considered the circumstances of the alleged offense of aggravated robbery, as well as all testimony and evidence presented at the hearing on the matter. This Court finds based on its review of the Clerk's record and its recollections of the matter that counsel, DENA FISHER was appointed more than ten (10) days prior to the hearing; the counsel for the child was given access to all written matter to be considered by the court in making the transfer decision more than five (5) days prior to the hearing and said J [REDACTED] G [REDACTED] had been served with citation more than two (2) days prior to the hearing. Also present at the hearing for the Respondent was his step mother, TERESA AGUIRRE.

This Court bases the factual findings on its observations, testimony heard and evidence admitted in the hearing on Petitioner's Motion to Waive Jurisdiction, the

Respondent's Objection to Jurisdiction According to Tex. Fam. Code Section 51.042 and Response to Motion to Waive Jurisdiction, the official court documents and records in petition numbers 20012-2020331J, and 2012-00331J-3rd Amended, and the petitioner's appearance and conduct before this Court at the hearing and during interactions with the Court before the hearing. After full investigation and hearing, at which hearing J [REDACTED] G [REDACTED], and stepmother, TERESA AGUIRRE were present, the court finds:

That J [REDACTED] G [REDACTED] is 18 years of age or older having been born on the [REDACTED] [REDACTED];

That J [REDACTED] G [REDACTED] was 10 years of age or older and under 17 years of age at the time J [REDACTED] G [REDACTED] is alleged to have committed an offense under Section 29.03, Penal Code on or about January 11, 2012;

That no adjudication concerning the offense has been made and no adjudication hearing concerning the offense has been conducted;

That by a preponderance of the evidence after due diligence of the State it was not practicable to proceed in juvenile court before the 18th birthday of the said J [REDACTED] G [REDACTED] because a previous transfer order was reversed by an appellate court;

And that there is probable cause to believe that J [REDACTED] G [REDACTED] committed the offense alleged. Moreover, the Court hereby incorporates by reference and by attachment as Appendix A as part of this written order, its Findings of Facts and Conclusions of Law issued on ____ day of _____, 2015. The attached

written findings of act and conclusions of law specifically state the reasons for this waiver and decision to transfer the matter to criminal district court and are likewise certified by this Court.

IT IS THEREFORE ORDERED that the said J [REDACTED] G [REDACTED] shall pursuant to Tex. Code Crim. Proc. Art. 17.09(1)(2) remain on surety bail bond in the amount of \$20,000.00 previously subscribed and sworn to on April 18, 2015 in Harris County, Texas; and that such bond shall be transferred to the proceedings to be held in the Criminal District Court of Harris County, Texas; that the jurisdiction of this Court sitting as a Juvenile Court, be and it is hereby waived, and the same J [REDACTED] G [REDACTED] is hereby transferred to the Criminal District Court of Harris County, Texas for criminal proceedings in accordance with the Texas Code of Criminal Procedure.

The Court further stated orally on the record on this date and in writing in this ORDER that the Juvenile may immediately appeal the certification decision under Family Code Section 56.01; and that by Order of the Texas Supreme Court, the appeal is accelerated under the Texas Rules of Appellate Procedure applicable to accelerated appeals.

Signed by me on this the _____ day of December, 2015.

Hon. John Phillips, Judge

Appendix A

Petition No. 2012-00331J - 3rd Amended

IN THE MATTER OF

§

IN THE 314th DISTRICT COURT

§

OF

J [REDACTED] G [REDACTED]

§

HARRIS COUNTY, TEXAS

ON THE 2nd of November, 2015, this Court held a hearing in the above styled and numbered cause under Section 54.02 of the Texas Family Code. After reviewing all the evidence admitted at the hearing including documentary evidence in the Court's file under this cause number of which it took judicial notice, the Court makes the following findings of fact and conclusions of law and now decides on the ____ day of _____, 2015, to waive its exclusive, original jurisdiction and discretionarily transfer the Respondent to the criminal district court. The Court reaches this decision because the welfare of the community requires criminal proceedings based on the seriousness of the offense alleged and the background of the child.

In reaching this decision, the Court makes the following findings of fact:

- (1) There is probable cause to believe the Respondent committed the offense, as alleged in the petition, namely the offense of Aggravated Robbery, which is a first degree felony.
- (2) The Respondent, having been born on [REDACTED], was 16 years old on the date of the alleged offense which was alleged to have occurred on January 11, 2012.
- (3) The Respondent was properly served with the petition and summons in compliance with the notice requirements of Section 53.04, 53.05, 53.06, and 53.07 of the Texas Family Code including that the summons stated the purpose of the hearing was to consider discretionary transfer to criminal district court. Moreover, the Respondent received the petition and summons at least two days before this Court conducted the hearing on November 2, 2015.
- (4) The Court ordered a complete diagnostic study, social evaluation, and full investigation of the Respondent, his circumstances, and the circumstances of the alleged offense. The Court obtained the diagnostic study, social evaluation, and full investigation.
- (5) At least five days before this hearing, the attorney for the Respondent and for the State received a copy of all reports this Court considered in reaching its decision, namely: the probation report, the reports of the Court's consultants, the Court Report Information Summary and 314th District Court Certification Report; the Certification Evaluation prepared by Uche Chibueze, Ph.D.; the Psychiatric Evaluation

Certification prepared by Linda B. Wittig, M.D., Child and Adolescent Psychiatrist;
the Juvenile Justice Center school records.

The Court then weighed, in addition to the above, the following factors and makes the below listed additional findings that support its decision, namely:

- (1) The Respondent is alleged to have committed an offense against the person of another, and this Court now finds that because it was against the person it gives greater weight in favor of discretionary transfer under this factor. The Court finds compelling that the Respondent and his co-actor placed the Complainant in fear of death or serious bodily injury with their actions in this offense. The Court also finds compelling that after the offense occurred that the Respondent attempted to evade police in a motor vehicle and that the Respondent lost control of the vehicle and ended the pursuit in an accident.
- (2) This Court considered the sophistication and maturity of the Respondent and finds based on its review of the Psychological Evaluation in Petitioner's Exhibit Number Two (2) and the entire Court Report Information Summary of the Respondent that was conducted at the Juvenile Justice Center along with the testimony of Uche Chibueze, Ph.D., that the Respondent's true and accurate level of intellectual based sophistication cannot be adequately measured based on the tests performed due to the fact that the Respondent's is bilingual and his primary language is Spanish. The Court bases that finding in part on the fact that the Spanish version of the Wechsler Intelligence Scale for Adults test was attempted by Alexandra Tellez, Ph.D. on 7/22/2015 but it was not completed due to language difficulties that prevented accurate scoring.
- (3) This Court reviewed the following records and finds the following facts show that appellant's previous history weighs in favor of discretionary transfer:
 - The Court reviewed Petitioner's Exhibit Number 2 and from it finds that the Respondent has had prior referrals to the Harris County Juvenile Probation Department.
 - The Court finds that on June 8, 2009 the Respondent was found to have engaged in delinquent conduct, Possession of Marihuana (0 to 2oz) in petition number 2009-02839J and Criminal Trespass in petition number 2009-02824J, and was found to be in need of rehabilitation, and subsequently placed in the custody of the Chief Juvenile Probation Officer (CJPO) for a period of one year ending August 2, 2011. On December 21, 2009 the Court approved a change of custody to his mother and this case was closed on June 8, 2010.
 - The Court finds that on August 2, 2010 the Respondent was found to have engaged in delinquent conduct, Criminal Trespass of a Motor Vehicle in petition number 2010-04680J, and was found to be in need of rehabilitation, and subsequently placed in the custody of the Chief Juvenile Probation Officer (CJPO) for a period of one year ending August 2, 2011. On December 17, 2011 the Court approved a change of custody to his mother.
 - The Court finds that on May 2, 2011 the Respondent was found to have violated his probation in petition number 2010-04680J for failing to attend school and his probation was revoked and he was placed in the custody of the Chief Juvenile Probation Officer.

The Court finds that the Respondent was placed on probation for an additional 18 months on May 2, 2011 that was to end on November 2, 2012. The Court also finds that on July 12, 2011 the Respondent was placed in the custody of his mother.

The Respondent admitted to being affiliated at one point in his life in a criminal street gang, namely "La Raza Trece."

While on probation the Respondent is alleged to have committed this Aggravated Robbery offense on January 11th, 2012.

In addition, the Court finds that on July 18, 2012 a charge of Aggravated Robbery and Evading Arrest in a Motor Vehicle were nonsuited after he was certified to stand trial as an adult on this second aggravated robbery charge.

(4) This Court finds based on the age of the Respondent on this date and its knowledge of the rehabilitative services that may be provided under Title III of the Texas Family Code and the age restrictions placed on them under the Texas Human Resources Code, that there is no prospect of adequate protection of the public and, due to his age at this time, no ability to attempt any reasonable rehabilitation of the Respondent by use of the procedures, services, and facilities currently available to the Juvenile Court for the following reasons:

- a) The Court finds that due to his age at this time, 20 years of age, he is ineligible to be placed in any programs, procedures, services and facilities currently available to the Juvenile Court.
- b) The Court finds from Petitioner's Exhibit 2 (P2) and the testimony of Uche Chibueze, Ph.D., that due to his age he is unable to benefit from services rendered in the juvenile system. The Court finds that any services for the Respondent will have to be accessed through the adult probation system or through the community.
- c) In addition, the Court finds that while under the Court's supervision and having been found to have been delinquent and in need of rehabilitation the Respondent is alleged to have committed the above described offense. The Court finds that this behavior shows that the Respondent exhibited an inability to submit to authority and an inability to benefit from the Harris County Juvenile Probation resources this Court had provided to the Respondent. Namely, he was placed in the following facilities of the Harris County Juvenile Probation Department:

Burnett-Bayland Reception Center (BAU) – June 10, 2009 to June 23, 2009

Harris County Youth Village – June 23, 2009 to January 1, 2010.

Burnett-Bayland Reception Center (BAU) – August 4, 2010 until September 16, 2010

Burnett-Bayland Reception Center (BAU) – September 16, 2010 to December 20, 2010.

Residential Assessment Unit – May 5, 2011 to May 10, 2011.

Burnett-Bayland Reception Center (BAU) – May 10, 2011 to July 12, 2011

In addition, he was placed on the following intensive supervision programs:

Residential Aftercare Supervision – December 21, 2010 to May 17, 2011.

Residential Aftercare Supervision – July 13, 2011 to August 8, 2011

Gang Caseload Supervision – August 8, 2011 to July 12, 2012. This ended due to the fact that he was placed in the Harris County Juvenile Detention Center on January 11, 2012 by the Houston Police Department for the offense of Aggravated Robbery.

The Court also finds that this aggravated offense that the Respondent is alleged to have committed exhibited a danger to society and to the public.

d) The Respondent is currently 20 years old and Texas law requires that on an indeterminate sentence issued under Texas Family Code Section 54.04(1), he can only be placed on probation until his 18th birthday which effectively bars this Court from utilizing the procedures, services, and facilities currently available to rehabilitate him. Furthermore, the Court finds that the Respondent previously exhibited a failure to engage in rehabilitation while under this court's supervision based on the Courts finding that there is probable cause to believe that the Respondent engaged in the above detailed Aggravated Robbery offense while he was under the supervision of the Harris County Juvenile Probation Department.

In addition, the Court finds that based on the Court Report Information Summary (P2) the Respondent failed to abide by the rules of his probation in that he failed to report to his Juvenile Probation Officer as requested; he failed to enroll in school and he failed to abide by his curfew.

e) The Court finds that the Respondent has not been rehabilitated and the Court finds that it is not in the best interest of society, the justice system and the community that the Court exercise any discretion, if such discretion exists, to dismiss this case.

f) Similarly, Texas Family Code Section 54.04 (d) (2) and Section 245.151 of the Texas Human Resources Code provides that this Court may only incarcerate the Respondent in the Texas Juvenile Justice Department until his 19th birthday, and due to the respondent being 20 years old his age bars this Court from exercising that option and bars this Court from being able to provide any services necessary to rehabilitate him in a manner that is adequate to protect the public.

g) The Court finds that the crime for which the Respondent is alleged to have committed is so egregious and aggravated that this Court determines that based on the offense, the psychological evaluation and reports, his current age and his prior referral history that he cannot be amenable to this Court's efforts to rehabilitate him.

h) Efforts of the Harris County Juvenile Probation Department to rehabilitate the Respondent for past criminal behavior have been unsuccessful, and instead the Respondent's criminal behavior escalated to the more serious offense of Aggravated Robbery. In addition, the Respondent is now 20 years of age and therefore the Court finds that there is no possibility that the Respondent will be rehabilitated by the use of procedures, services, and facilities currently available to the court.

i) The Court finds that there is no prospect that there will be adequate protection of the public with the Respondent in the juvenile system due to findings the Court has made which are based on the evidence the court has reviewed.

(5) The Court finds that the State exercised due diligence in attempting to proceed on this case before his 18th birthday.

(6) The Court finds that on July 18, 2012 the 314th District Court sitting as a juvenile court waived its jurisdiction over this offense and transferred the case to the Criminal District Court of Harris County, Texas and that this date was prior to the Respondent's 18th birthday.

- (7) The Court finds that no adjudication concerning the alleged offense has been made and no adjudication hearing concerning the offense has been conducted.
- (8) The Court finds that the Respondent pled guilty to this Aggravated Robbery offense on February 12, 2013 in the 338th District Court of Harris County, Texas in cause number 1354948 and was sentenced to 8 years TDCJID on February 12, 2013.
- (9) The Court finds that by a preponderance of the evidence after due diligence of the State it was not practicable to proceed in juvenile court before the 18th birthday of the said Jorge Guerrero because the 314th Court's previous transfer order was reversed by the 14th Court of Appeals of Texas on March 23, 2015.
- (10) This Court finds by a preponderance of the evidence that the State could not proceed in juvenile court before the 18th birthday of the respondent because it could not have foreseen that the previous transfer order would be reversed by an appellate court after the respondent turned eighteen (18).
- (11) The State exercised due diligence throughout the pendency of this case by seeking discretionary transfer in a timely fashion before the respondent turned 18, proceeding to a hearing before the respondent turned 18, and by filing the 3rd Amended request to seek waiver of jurisdiction as soon as practicable after the Fourteenth Court of Appeals reversed the original transfer order and the respondent returned to Harris County and appeared in this Court.

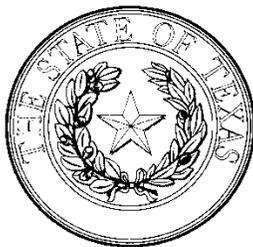
In reaching this decision, the Court makes the following conclusions of law:

Based on the credible testimony and evidence presented in this hearing, the demeanor of all witnesses and having viewed and reviewed all exhibits admitted at the hearing, the Court makes the following conclusions of law:

- (1.) Because the respondent was born on [REDACTED], he is now over the age of eighteen (18). *See* TEX. FAM. CODE ANN. §54.002(j)(1)(West Supp. 2014).
- (2.) Because the instant offense occurred on January 11, 2012, the respondent was sixteen (16) at the time of the commission of the offense. *See* TEX. FAM. CODE ANN. §54.002(j)(2)(B)(West Supp. 2014).
- (3.) Because the instant offense that was committed constitutes aggravated robbery under Section 29.03 of the Texas Penal Code and is a first degree felony, it is subject to transfer pursuant to Texas Family Code Section 54.02(j)(2)(B) (West Supp.2014).
- (4.) Because the Fourteenth Court of Appeals determined that original, exclusive jurisdiction remained in the 314th District Court rather than properly transferring to the 338th District Court, no adjudication concerning this offense has been made and no adjudication hearing concerning the offense has been conducted. *See* TEX. FAM. CODE ANN. §54.02(j)(3)(West Supp. 2014).
- (5.) Because the appellate court reversed the previous transfer order on a date after the Respondent turned eighteen (18) years old, after due diligence of the State it was not practicable to proceed in juvenile court before the 18th birthday of the respondent. *See* TEX. FAM. CODE ANN. §54.02(j)(4)(B)(iii) (West Supp. 2014) (permitting discretionary transfer when due diligence of the State is shown because it was not

practicable to proceed before the juvenile's 18th birthday when "a previous transfer order was reversed by an appellate court or set aside by a district court.").

Opinion issued May 5, 2016



In The
Court of Appeals
For The
First District of Texas

NO. 01-15-01025-CV

IN THE MATTER OF J.G., Appellant

**On Appeal from the 314th District Court
Harris County, Texas
Trial Court Case No. 2012-00331J**

OPINION

In this accelerated appeal, after the State alleged that appellant, J.G., who was sixteen years old at the time, had engaged in delinquent conduct, the trial court waived its jurisdiction and certified appellant to stand trial as an adult. Appellant pleaded guilty to the offense of aggravated robbery in the criminal district court,

but the Fourteenth Court of Appeals held that the juvenile court abused its discretion in waiving jurisdiction and reversed appellant's conviction. *See [J.G.] v. State*, 471 S.W.3d 1 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (“*J.G. I*”). On remand, the juvenile court again waived its jurisdiction and certified appellant, who was now over the age of eighteen, as an adult. In two issues, appellant contends that (1) Family Code section 54.02(j), which applies to a juvenile defendant who is over the age of eighteen and allows the juvenile court to waive its jurisdiction and certify the defendant as an adult, is unconstitutional as applied to him, when he had the court's previous waiver of jurisdiction reversed on appeal; and (2) the juvenile court abused its discretion when it waived jurisdiction over him.

We affirm.

Background

On January 17, 2012, the State filed a petition in the juvenile court alleging that appellant had engaged in delinquent conduct by committing aggravated robbery. Appellant was sixteen at the time the State filed its petition. On May 11, 2012, the State filed an amended petition, which also requested that the juvenile court waive its exclusive original jurisdiction and transfer appellant to the criminal district court for further proceedings. On the same date, the State filed a separate motion to waive jurisdiction, arguing that because of the seriousness of the offense,

“the welfare of the community requires criminal proceedings and it is in the best interest of the State of Texas” and appellant that the juvenile court waive its exclusive jurisdiction.

In advance of the certification hearing, the trial court had prepared a “return to court summary,” which summarized the facts of the charged offense, appellant’s behavior while in custody for the charged offense, his prior encounters with the juvenile court system, his behavior while on probation for prior offenses, and his educational history. The trial court also ordered a psychiatric evaluation, which was conducted in the presence of appellant’s attorney approximately one month before the certification hearing, and an evaluation of his intellectual functioning. The latter evaluation specifically addressed factors relevant to the juvenile court’s decision concerning certification, including the seriousness of the crime, appellant’s level of sophistication and maturity, prior rehabilitation efforts, and risk of violence. The evaluator recommended that “[d]ue to [the] seriousness of the nature of his alleged offenses, if adjudicated, [appellant] will likely benefit from a highly structured environment that is instrumental in helping him regulate his involvement in negative activities,” that appellant “would benefit from intensive substance abuse treatment,” and that appellant “would benefit from participation in an independent living program and could benefit from training in a service trade.”

On July 18, 2012, less than one month after appellant turned seventeen, the juvenile court held a certification hearing. The order waiving jurisdiction specifically stated that after a “full investigation and hearing,” the court found that appellant

is charged with a violation of a penal law of the grade of felony, if committed by an adult, to wit: **AGGRAVATED ROBBERY** committed on or about the **11th** day of **JANUARY, 2012**; that there has been no adjudication of THIS OFFENSE; that he was 14 years of age or older at the time of the commission of the alleged OFFENSE . . . ; that there is probable cause to believe that the child committed the OFFENSE alleged and that because of the seriousness of the OFFENSE, the welfare of the community requires [a] criminal proceeding. In making that determination, the Court has considered among other matters:

1. Whether the alleged OFFENSE WAS against [a] person or property, with the greater weight in favor of waiver given to offenses against the person;
2. The sophistication and maturity of the child;
3. The record and previous history of the child; and
4. The prospects of adequate protection of the public and the likelihood of reasonable rehabilitation of the child by use of procedures, services and facilities currently available to the Juvenile Court.

The Court specifically finds that the said [appellant] is of sufficient sophistication and maturity to have intelligently, knowingly and voluntarily waived all constitutional rights heretofore waived by the said [appellant], to have aided in the preparation of HIS defense and to be responsible for HIS conduct; that the OFFENSE allege[d] to have been committed WAS against the person of another; and the evidence and reports heretofore presented to the court demonstrate to the court that there is little, if any, prospect of adequate protection of

the public and likelihood of reasonable rehabilitation of the said [appellant] by use of procedures, services, and facilities currently available to the Juvenile Court.

The juvenile court thus waived its original jurisdiction and ordered appellant transferred to Harris County criminal district court.

Upon being transferred to the criminal district court, appellant pleaded guilty to the charged offense of aggravated robbery. Appellant appealed his conviction to the Fourteenth Court of Appeals.¹ On appeal, appellant argued that the juvenile court abused its discretion when it waived jurisdiction over him, that the evidence was insufficient to support a waiver of jurisdiction, and that the juvenile court erred by not including specific evidentiary findings supporting its determination in the order waiving jurisdiction. *See J.G. I*, 471 S.W.3d at 4.

The Fourteenth Court of Appeals relied upon a recent Court of Criminal Appeals decision, *Moon v. State*, 451 S.W.3d 28 (Tex. Crim. App. 2014), in holding that the juvenile court, in an order waiving its original jurisdiction, must state both the reasons for waiving its jurisdiction and the findings of fact that support those reasons. *J.G. I*, 471 S.W.3d at 4. The court noted that the transfer

¹ From January 1, 1996, to September 1, 2015, Code of Criminal Procedure article 44.47 was in effect and provided that a juvenile defendant could appeal an order from the juvenile court waiving jurisdiction and transferring him to district court, but only in conjunction with the appeal of a final judgment of conviction in the district court. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 85, 1995 Tex. Gen. Laws 2517, 2584. Effective September 1, 2015, Texas Family Code section 56.01(c) applies and permits the juvenile to immediately appeal a transfer order. *See* TEX. FAM. CODE ANN. § 56.01(c)(1)(A) (Vernon Supp. 2015).

order in this case made “no findings about the specifics of the alleged offense” and found “no more than probable cause to believe that appellant committed ‘the OFFENSE alleged.’” *Id.* The court also noted that “the only stated reason given for appellant’s transfer was that ‘because of the seriousness of the OFFENSE, the welfare of the community requires criminal proceeding[s,]’ and the only specific fact supporting this reason was that ‘the OFFENSE allege[d] to have been committed WAS against the person of another[.]’” *Id.* Our sister court thus concluded that “the juvenile court’s waiver of jurisdiction ‘based on this particular reason fortified only by this fact’ constitutes an abuse of discretion.” *Id.* The court determined that the criminal district court never acquired jurisdiction over appellant, vacated the judgment of conviction, dismissed the case against appellant in the district court, and remanded the case to the juvenile court “for further proceedings.” *Id.*

After the Fourteenth Court of Appeals remanded the case to the juvenile court, the State filed an amended petition against appellant on March 20, 2015. At that point, appellant was nineteen years old. The State again sought certification of appellant as an adult, and the juvenile court ordered a new round of psychological and intellectual evaluations of appellant.

The juvenile court held a certification hearing on November 2, 2015. At this hearing, Houston Police Department Officer C. Elder testified concerning the facts

of the underlying aggravated robbery offense. Officer Elder testified that he was on patrol around 10:30 p.m. on January 11, 2012, in southwest Houston when he received a dispatch concerning a robbery. Officer Elder drove to a nearby apartment complex and spoke with Antonio Duran, the complainant, who informed him that he arrived at the complex and honked his horn at a car that was blocking the gate into the complex. The other car allowed Duran to pass through the gate, and after he did he parked in a parking space. As he started walking to an apartment, appellant walked up to him with another man who pointed a gun in Duran's face and demanded his money and any property he had with him. Appellant and the other man then drove away in their own vehicle.

Duran gave Officer Elder a description of the vehicle, and, after Elder gave that information to the dispatcher, another officer, Officer Gerard, observed the vehicle at the scene of a second robbery. Appellant and his companion fled the scene of the second robbery, but they crashed at a nearby apartment complex. Officer Elder discovered Duran's property in the car that appellant was driving, and Duran arrived at the scene of the crash and gave a positive identification of appellant as one of the men who had robbed him. Officers recovered a pistol from appellant's companion, who was twenty years old at the time of the offense and was therefore tried in criminal district court.

At the hearing, appellant raised several objections to the juvenile court's proceeding with a certification decision. Appellant argued that re-certification was not proper because, under Family Code section 54.02(j), which applies to certification decisions made after the individual turns eighteen, the State could not prove that there was no prior adjudication of the offense. Appellant also argued that the State could not prove that it had exercised due diligence to obtain an adjudication of the offense in the juvenile court before he turned eighteen. Appellant further argued that the State could not prove that probable cause existed that appellant himself committed the offense because the evidence reflected that appellant was a party to the offense of aggravated robbery, and the State could not seek certification based on the defendant's "participation as a party because there's a difference between criminal culpability for a party and commission of an offense." Appellant also argued that allowing the State to seek recertification under section 54.02(j), instead of section 54.02(a), which applies to certification decisions before the individual turns eighteen, and which was the subsection used to certify appellant the first time, violated the double-jeopardy clause.

The juvenile court found that appellant was over the age of eighteen; that he was at least ten years of age and younger than seventeen at the time of the alleged offense; that no adjudication concerning the offense had been made and no adjudication hearing concerning the offense had been conducted; that a

preponderance of the evidence showed that despite due diligence by the State, it was not practicable to proceed in the juvenile court before appellant's eighteenth birthday because a previous transfer order, pending when appellant turned eighteen, had been reversed by an appellate court after appellant's eighteenth birthday; and probable cause existed to believe that appellant committed the alleged offense. The juvenile court incorporated by reference extensive findings of fact and conclusions of law concerning what the court specifically considered when making its certification determination. The juvenile court ultimately waived original jurisdiction and recertified appellant to stand trial as an adult.

This accelerated appeal followed. *See* TEX. FAM. CODE ANN. § 56.01(c)(1)(A), (h) (Vernon Supp. 2015) (providing right to immediate appeal from order “respecting transfer of the child for prosecution as an adult” and providing that appeal from such order “has precedence over all other cases”).

Juvenile Certification

The Juvenile Justice Code governs proceedings in all cases involving the delinquent conduct of a person who was a child at the time they engaged in the conduct. TEX. FAM. CODE ANN. § 51.04(a) (Vernon Supp. 2015); *id.* § 51.02(2)(A) (Vernon Supp. 2015) (defining “child” as a person who is “ten years of age or older and under 17 years of age”). The juvenile court has exclusive original jurisdiction over all proceedings governed by the Juvenile Justice Code. *Id.*

§ 51.04(a). Family Code section 54.02 provides that the juvenile court may waive its exclusive jurisdiction and transfer a child to the appropriate district court for criminal proceedings if:

- (1) the child is alleged to have violated a penal law of the grade of felony;
- (2) the child was:
 - (A) 14 years of age or older at the time he is alleged to have committed the offense, if the offense is . . . a felony of the first degree, and no adjudication hearing has been conducted concerning that offense; [and]
-
- (3) after a full investigation and a hearing, the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged and that because of the seriousness of the offense alleged or the background of the child the welfare of the community requires criminal proceedings.

TEX. FAM. CODE ANN. § 54.02(a) (Vernon 2014); *see Moore v. State*, 446 S.W.3d 47, 52 (Tex. App.—Houston [1st Dist.] 2014, pet. granted) (holding that section 54.02(a) applies to one who is “child” at time of transfer and section 51.02(2) defines “child” as person who is “ten years of age or older and under 17 years of age”). The State bears the burden to produce evidence that the waiver of jurisdiction is appropriate. *Moon*, 451 S.W.3d at 40. Before holding the transfer hearing, the juvenile court shall order and obtain a diagnostic study, social

evaluation, and full investigation of the child, his circumstances, and the circumstances of the alleged offense. TEX. FAM. CODE ANN. § 54.02(d).

A transfer hearing is not held for the purpose of determining guilt or innocence, but is instead held for “the purpose of establishing whether the child’s and society’s best interest are met by maintaining juvenile custody of the child or by transferring the child to district court for adult proceedings.” *In re A.A.*, 929 S.W.2d 649, 653 (Tex. App.—San Antonio 1996, no pet.). In making its determination concerning transfer, the juvenile court shall consider, among other matters:

- (1) whether the alleged offense was against person or property, with greater weight in favor of transfer given to offenses against the person;
- (2) the sophistication and maturity of the child;
- (3) the record and previous history of the child; and
- (4) the prospects of adequate protection of the public and the likelihood of the rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court.

TEX. FAM. CODE ANN. § 54.02(f). If the juvenile court waives jurisdiction, “it shall state specifically in the order its reasons for waiver” *Id.* § 54.02(h).

Juvenile courts are courts of limited jurisdiction, and, generally, maintain jurisdiction over a child who has turned eighteen only to transfer the case to the criminal district court pursuant to section 54.02(j) or dismiss the case. *In re N.J.A.*,

997 S.W.2d 554, 556 (Tex. 1999); *In re B.R.H.*, 426 S.W.3d 163, 166 (Tex. App.—Houston [1st Dist.] 2012, orig. proceeding). The Juvenile Justice Code, however, provides statutory exceptions to this general rule. The juvenile court retains jurisdiction over a person, without regard to that person’s age, for conduct engaged in by the person prior to turning seventeen if, as a result of an appeal by the person of the juvenile court’s transfer order, the order is reversed and the case remanded to the juvenile court by the appellate court. TEX. FAM. CODE ANN. § 51.041(a) (Vernon Supp. 2015). The juvenile court also retains jurisdiction over a person, without regard to that person’s age, who is a respondent in a proceeding for waiver of jurisdiction and transfer to the district court under section 54.02(a) if: (1) the transfer motion was filed while the respondent was younger than eighteen or nineteen years of age; (2) the proceeding is not complete before the respondent becomes eighteen or nineteen years of age; and (3) the juvenile court enters a finding that the prosecuting attorney exercised due diligence in an attempt to complete the proceeding before the respondent turned eighteen or nineteen. *Id.* § 51.0412 (Vernon 2014); *In re B.R.H.*, 426 S.W.3d at 166–67. A child who objects to the jurisdiction of the juvenile court must raise the objection at the discretionary transfer hearing. TEX. FAM. CODE ANN. § 51.042(a) (Vernon 2014).

Section 54.02(j) concerns waiver of jurisdiction when the person before the court is over the age of eighteen. *See id.* § 54.02(j). This subsection provides that

the juvenile court may waive its original jurisdiction and transfer a person to the appropriate district court if:

- (1) the person is 18 years of age or older;
- (2) the person was:
 -
 - (B) 14 years of age or older and under 17 years of age at the time the person is alleged to have committed . . . a felony of the first degree other than an offense under Section 19.02, Penal Code;
 -
- (3) no adjudication concerning the alleged offense has been made or no adjudication hearing concerning the offense has been conducted;
- (4) the juvenile court finds from a preponderance of the evidence that:
 - (A) for a reason beyond the control of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person; or
 - (B) after due diligence of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person because:
 - (i) the state did not have probable cause to proceed in juvenile court and new evidence has been found since the 18th birthday of the person;
 - (ii) the person could not be found; or
 - (iii) a previous transfer order was reversed by an appellate court or set aside by a district court; and

- (5) the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged.

Id.

The State bears the burden of demonstrating that proceeding in the juvenile court was not practicable because of circumstances outside the control of the State. *Moore*, 446 S.W.3d at 51. The State is not required to establish the guilt of the child, but instead is only required to “present evidence which will allow the juvenile court to exercise its sound discretion in making [a] transfer to [the] district court for criminal proceedings.” *In re A.A.*, 929 S.W.2d at 653.

Constitutionality of Section 54.02(j)

In his first issue, appellant challenges the constitutionality of Family Code section 54.02(j), the section on which the juvenile court based its waiver of its jurisdiction, as applied to him. Appellant argues that the application of the statute in his case violates the double jeopardy clause, the due process clause, the equal protection clause, and the cruel and unusual punishment clause and that the statute is an unconstitutional ex post facto law.

There are two types of challenges to the constitutionality of a statute: the statute is unconstitutional as applied to the defendant, or the statute is unconstitutional on its face. *Fluellen v. State*, 104 S.W.3d 152, 167 (Tex. App.—Texarkana 2003, no pet.). Statutes are presumed to be constitutional until it is

determined otherwise. *Karenev v. State*, 281 S.W.3d 428, 434 (Tex. Crim. App. 2009). A litigant who challenges the constitutionality of a statute has the burden of rebutting the presumption of constitutionality. *State v. Rosseau*, 398 S.W.3d 769, 778 (Tex. App.—San Antonio 2011), *aff'd*, 396 S.W.3d 550 (Tex. Crim. App. 2013). In the absence of contrary evidence, we presume that the legislature acted in a constitutionally sound fashion, and we uphold the statute if we can ascertain a reasonable construction that will render the statute constitutional and will carry out the legislative intent. *Lawson v. State*, 283 S.W.3d 438, 440 (Tex. App.—Fort Worth 2009, *pet. ref'd*).

A. *Double Jeopardy*

The Fifth Amendment to the United States Constitution provides that no person shall be “subject for the same offence to be twice put in jeopardy of life or limb.” U.S. CONST. amend. V; *see also* TEX. CONST. art. I, § 14 (“No person, for the same offense, shall be twice put in jeopardy of life or liberty; nor shall a person be again put upon trial for the same offense after a verdict of not guilty in a court of competent jurisdiction.”); *Ex parte Mitchell*, 977 S.W.2d 575, 580 (Tex. Crim. App. 1997) (“We have consistently held, however, that the Texas and United States constitutions’ double jeopardy provisions provide substantially identical protections.”). The Double Jeopardy Clause protects a defendant from three things: (1) a second prosecution for the same offense after acquittal; (2) a second

prosecution for the same offense after conviction; and (3) multiple punishments for the same offense. *Ex parte Milner*, 394 S.W.3d 502, 506 (Tex. Crim. App. 2013) (citing *Brown v. Ohio*, 432 U.S. 161, 165, 97 S. Ct. 2221, 2225 (1977)). Although the Double Jeopardy Clause precludes retrial of a defendant whose conviction is reversed on appeal on the basis of insufficient evidence, it does not preclude retrial when the defendant's conviction is reversed on appeal for trial error. *See Lockhart v. Nelson*, 488 U.S. 33, 39, 109 S. Ct. 285, 290 (1988).

Here, appellant argues that double jeopardy bars recertification in this case because, in *J.G. I*, the Fourteenth Court of Appeals determined that insufficient evidence supported the juvenile court's decision to waive jurisdiction and transfer his case to the district court. We conclude, however, that this is a mischaracterization of *J.G. I*. Although appellant is correct that the Fourteenth Court determined that the juvenile court erroneously certified him as an adult, it did not reach the question of whether insufficient evidence supported the juvenile court's decision. Instead, our sister court based its opinion on the fact that, under the Court of Criminal Appeals' decision in *Moon*, the transfer order was facially defective because it did not make any specific findings about the seriousness of appellant's alleged offense and did not support its ultimate conclusion that transfer was warranted with any facts found in the record. *See J.G. I*, 471 S.W.3d at 4. The court concluded that "the juvenile court's waiver of jurisdiction 'based on this

particular reason fortified only by this fact’ constitutes an abuse of discretion.” *Id.* (quoting *Moon*, 451 S.W.3d at 50). The Fourteenth Court thus held that the transfer order itself was defective; it did not hold that the trial court’s decision to waive jurisdiction and transfer appellant’s case was not supported by sufficient evidence. *See id.*

We therefore conclude that, because appellant’s prior conviction for the charged offense in this case was reversed due to trial error, and not due to insufficient evidence, double jeopardy does not preclude the juvenile court from waiving its jurisdiction, certifying appellant as an adult, and transferring the case to district court a second time.² *See Lockhart*, 488 U.S. at 39, 109 S. Ct. at 290.

B. *Ex Post Facto* Law

Both the United States and Texas Constitutions contain prohibitions on enacting ex post facto laws. U.S. CONST. art. I, § 10, cl. 1; TEX. CONST. art. I,

² As the State points out, the Court of Criminal Appeals in *Moon*, upholding this Court’s decision to reverse the juvenile court’s transfer order based on, among other things, failure to include specific fact findings supporting its decision to waive jurisdiction, indicated in dicta that, on remand, the juvenile court retained the ability to make a second certification decision based on Family Code section 54.02(j). The Court of Criminal Appeals stated:

The question nevertheless ineluctably presents itself: Pending for what? We leave that question for the juvenile court, but we do note that at least one legislatively provided alternative would seem to be for the juvenile court to conduct a new transfer hearing and enter another order transferring the appellant to the jurisdiction of the criminal court, assuming that the State can satisfy the criteria under Section 54.02(j) of the Juvenile Justice Code.

Moon v. State, 451 S.W.3d 28, 52 n.90 (Tex. Crim. App. 2014).

§ 16. An ex post facto law: (1) punishes as a crime an act previously committed which was innocent when done; (2) changes the punishment and inflicts a greater punishment than the law attached to the criminal offense when committed; or (3) deprives a person charged with a crime of any defense available at the time the act was committed. *Rodriguez v. State*, 93 S.W.3d 60, 66 (Tex. Crim. App. 2002). A law is also an impermissible ex post facto law if it “alters the legal rules of evidence, and receives less, or different, testimony, than the law required at the time of the commission of the offence, in order to convict the offender.” *Carmell v. Texas*, 529 U.S. 513, 530, 120 S. Ct. 1620, 1631 (2000).

Appellant argues that section 54.02(j), as applied in this case, “changes the rules after the fact in a way that materially changes the state’s substantive burden to certify and then convict the child, and subjects the child to adult criminal penalties to which he would not have been subject under the applicable law when the alleged crime was committed.” Section 54.02(j), however does not fit within any of the enumerated categories of ex post facto laws. It does not punish an act that was innocent when appellant committed it; it does not change the punishment and inflict a greater punishment than existed when appellant committed the criminal act, as he was always subject to the possibility of the trial court waiving its jurisdiction and transferring his case to the criminal district court, which would then impose an “adult” sentencing range; it does not deprive appellant of a defense

that was available at the time he committed the alleged criminal act; and, while section 54.02(j) does involve the consideration of different statutory factors from section 54.02(a), and thus requires the consideration of different evidence when making the transfer decision, the decision to transfer appellant to the district court is not an adjudication or a “conviction” of the alleged offense. *See Carmell*, 529 U.S. at 530, 120 S. Ct. at 1631; *Rodriguez*, 93 S.W.3d at 66; *see also In re D.M.*, 611 S.W.2d 880, 883 (Tex. Civ. App.—Amarillo 1980, no writ) (holding that transfer proceeding in juvenile court is not adjudicatory hearing to determine whether defendant committed alleged offense, but is instead hearing to determine whether defendant should remain in juvenile court system or be transferred to adult system “for criminal proceedings”).

We conclude that section 54.02(j) is not itself an unconstitutional ex post facto law. Nor is it applied unconstitutionally in this case.

C. Due Process and Equal Protection

Appellant argues that recertification in this case under section 54.02(j) denies him due process because he “lost the protection of the equitable factors in Section 54.02(f)” that must be considered when the trial court certifies a juvenile respondent who has not yet turned eighteen under section 54.02(a), and he was instead certified a second time under “an entirely new set of standards.” Appellant also argues that application of section 54.02(j) to him violates his equal protection

rights because this subsection “does not apply to a juvenile who is certified at a younger age and has time to obtain a reversal of his original certification and return to juvenile court before age 18” and still have the subsection 54.02(a) and (f) factors applied to him.

The United States Supreme Court has held that “the waiver of [juvenile court] jurisdiction is a ‘critically important’ action determining vitally important statutory rights of the juvenile.” *Kent v. United States*, 383 U.S. 541, 556, 86 S. Ct. 1045, 1055 (1966). Due process requires, as a condition to a valid waiver order, “a hearing, including access by [the juvenile’s] counsel to the social records and probation or similar reports which presumably are considered by the court, and to a statement of reasons for the Juvenile Court’s [transfer] decision.” *Id.* at 557, 86 S. Ct. at 1055. The Supreme Court held that juvenile courts must “accompany [their] waiver order[s] with a statement of the reasons or considerations therefor” and that transfer hearings must “measure up to the essentials of due process and fair treatment.” *Id.* at 561–62, 86 S. Ct. at 1057.

Under Texas’s statutory scheme, the juvenile court may waive its exclusive jurisdiction and transfer a child to the district court for criminal proceedings under section 54.02(a) if the child is fourteen years of age or older at the time he is alleged to have committed a first-degree felony offense. *See* TEX. FAM. CODE ANN. § 54.02(a)(2)(A); *see also id.* § 51.02(2) (defining “child” as “a person who

is . . . ten years of age or older and under 17 years of age”). To certify the juvenile as an adult under this section, the juvenile court must determine that there is probable cause to believe that the child committed the alleged offense and that, because of the seriousness of the offense or the background of the child, the welfare of the community requires criminal proceedings. *Id.* § 54.02(a)(3). Prior to the transfer hearing, the juvenile court must order and obtain a complete diagnostic study, social evaluation, and full investigation of the child, his circumstances, and the circumstances of the alleged offense. *Id.* § 54.02(d). The juvenile court must also consider the four factors enumerated by section 54.02(f): (1) whether the alleged offense was against person or property, with greater weight in favor of transfer given to offenses against the person; (2) the sophistication and maturity of the child; (3) the record and previous history of the child; and (4) the prospects of adequate protection of the public and the likelihood of the rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court. *Id.* § 54.02(f). The juvenile court, in its transfer order, must make specific findings of fact regarding each of the section 54.02(f) factors. *See Moon*, 451 S.W.3d at 47.

If the person has turned eighteen, the juvenile court must determine whether to certify him as an adult under section 54.02(j). Under that subsection, the juvenile court must consider whether the person was between fourteen and

seventeen years of age at the time he was alleged to have committed a first-degree felony, whether an adjudication concerning the alleged offense has been made or an adjudication hearing conducted, whether it was not practicable to proceed in juvenile court before the person's eighteenth birthday, and whether probable cause exists to believe the person committed the alleged offense. *See id.* § 54.02(j). A juvenile court conducting a transfer proceeding under subsection 54.02(j) is not required to conduct the diagnostic study, social evaluation, or full investigation of the child and his circumstances that subsection 54.02(d) requires for proceedings under subsection 54.02(a). *See id.* § 54.02(l).

Here, it is undisputed that when the juvenile court initially waived jurisdiction and transferred appellant's case, it did so pursuant to section 54.02(a), as appellant was seventeen at the time. When the court waived jurisdiction and transferred the case the second time following remand from the Fourteenth Court of Appeals, it did so pursuant to section 54.02(j), as appellant was twenty at the time of the second transfer hearing. In its second order waiving jurisdiction, in addition to making specific findings on each of the section 54.02(j) factors, the juvenile court also incorporated by reference extensive findings of fact and conclusions of law. These findings and conclusions not only contained facts supporting the section 54.02(j) factors, they also addressed the factors enumerated

by section 54.02(a) and section 54.02(f), even though the court did not waive its jurisdiction under those subsections.

In the findings and conclusions, the juvenile court made findings that appellant committed an offense against the person of another, and the court found it compelling that appellant “and his co-actor placed the Complainant in fear of death or serious bodily injury with their actions in this offense.” The juvenile court ordered a new round of psychological evaluations following remand of the case, and it found that it could not “adequately measure[]” appellant’s “true and accurate level of intellectual based sophistication” because appellant is bilingual and the examiner had difficulties scoring appellant’s answers on the Spanish version of one of the intellectual tests administered. The juvenile court also recited appellant’s extensive history with the juvenile justice system prior to the offense at issue, which included a pattern of offenses escalating in seriousness to the alleged offense of aggravated robbery, and his numerous prior placements with rehabilitation programs offered by the juvenile system. The juvenile court found that appellant “previously exhibited a failure to engage in rehabilitation while under this court’s supervision.” The juvenile court also made findings concerning each of the statutory factors relevant to the decision to waive jurisdiction under section 54.02(j).

Even though the text of section 54.02(j) does not mandate consideration of the relevant factors under subsections (a) and (f), required to be considered for juveniles who have not yet turned eighteen, the record is clear that, in making its transfer decision following remand, the juvenile court considered the subsection (a) and (f) factors as they applied to appellant's particular case. In this case, therefore, the juvenile court essentially considered *all* of the relevant statutory factors for waiver of jurisdiction that the Legislature has specifically enumerated in section 54.02, despite the age-based distinction between subsections (a) and (f) and subsection (j). We therefore conclude that section 54.02(j), as applied to appellant in this case, did not deprive appellant of due process and equal protection.

D. Cruel and Unusual Punishment

Appellant argues that section 54.02(j) violates the Eighth Amendment's prohibition against cruel and unusual punishment because it "deprived him of his liberty interest in being treated differently [from adult offenders] when he was a child and gave the juvenile court on remand no opportunity to weigh the purposes of punishment when that court had to decide whether to transfer him a second time to adult court."

The Eighth Amendment provides that "cruel and unusual punishments" shall not be inflicted. U.S. CONST. amend. VIII. "Protection against disproportionate punishment is the central substantive guarantee of the Eighth Amendment and goes

far beyond the manner of determining a defendant's sentence.” *Montgomery v. Louisiana*, 136 S. Ct. 718, 732–33 (2016). The United States Supreme Court has noted that “children are constitutionally different from adults for purposes of sentencing” and, accordingly, has held, among other things, that the assessment of the death penalty and mandatory life sentences without parole against juveniles violates the Eighth Amendment. *See id.* (quoting *Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012)). The Court noted that due to “children’s diminished culpability and heightened capacity for change,” the retributive and rehabilitative purposes of the criminal justice system ought to be weighed differently for juvenile offenders as opposed to adult offenders. *Id.*

Appellant argues that section 54.02(j) does not allow the juvenile court to consider the juvenile’s greater need for rehabilitation and the lesser weight placed on retribution when making a transfer decision. However, as we have detailed above, in making its decision to waive jurisdiction a second time and transfer appellant’s case to the district court, the juvenile court in this case clearly considered appellant’s prior history with the juvenile justice system, the rehabilitative placements that were made, his lack of cooperation with those rehabilitative goals, and the escalation of his criminal conduct. We cannot conclude that, as applied to this case, section 54.02(j) constitutes cruel and unusual punishment violating the Eighth Amendment.

We overrule appellant's first issue.

Trial Court's Decision to Waive Jurisdiction

In his second issue, appellant contends that the juvenile court abused its discretion when it waived jurisdiction and transferred the case to the district court because the State presented insufficient evidence to support the required statutory factors for transferring the case of an individual over eighteen years old. Specifically, appellant contends that the State did not provide sufficient evidence that (1) after due diligence, it was not practicable to proceed in juvenile court before appellant's eighteenth birthday because the previous transfer order was reversed; (2) no adjudication of the alleged offense had been made; and (3) probable cause existed that appellant "committed" the alleged offense, because the evidence established that, at most, appellant was a party to the offense and not the principal actor.

We review the trial court's specific findings of fact concerning a transfer decision under traditional sufficiency of evidence principles. *Moon*, 451 S.W.3d at 47; *Faisst v. State*, 105 S.W.3d 8, 12 (Tex. App.—Tyler 2003, no pet.) ("The juvenile court's findings of fact are reviewable by the same standards as are applied in reviewing the legal or factual sufficiency of the evidence supporting a jury's answers to a charge."). Under a legal sufficiency challenge, we credit evidence favorable to the challenged finding and disregard contrary evidence

unless a reasonable fact finder could not reject the evidence. *Moon v. State*, 410 S.W.3d 366, 371 (Tex. App.—Houston [1st Dist.] 2013), *aff'd*, 451 S.W.3d 28 (Tex. Crim. App. 2014). We will not second-guess the fact finder “unless only one inference can be drawn from the evidence.” *Faisst*, 105 S.W.3d at 12. If more than a scintilla of evidence supports the finding, the no-evidence challenge fails. *Moon*, 410 S.W.3d at 371. Under a factual sufficiency challenge, we consider all of the evidence presented to determine if the court’s findings are against the great weight and preponderance of the evidence so as to be clearly wrong or unjust. *Id.*

We review the juvenile court’s ultimate decision to waive jurisdiction for an abuse of discretion. *Moon*, 451 S.W.3d at 47; *Faisst*, 105 S.W.3d at 12 (“Absent an abuse of discretion, we will not disturb a juvenile court’s findings.”). In doing so, we ask whether the juvenile court’s transfer decision was “essentially arbitrary, given the evidence upon which it was based, or [whether] it represent[ed] a reasonably principled application of the legislative criteria.” *Moon*, 451 S.W.3d at 47.

A. *State’s Exercise of Due Diligence Before Appellant’s 18th Birthday*

Section 54.02(j) provides that a juvenile court may waive jurisdiction and transfer the proceeding to the criminal district court if, among other things:

- (4) the juvenile court finds from a preponderance of the evidence that:

- (A) for a reason beyond the control of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person; or
- (B) after due diligence of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person because:
 - (i) the state did not have probable cause to proceed in juvenile court and new evidence has been found since the 18th birthday of the person;
 - (ii) the person could not be found; or
 - (iii) a previous transfer order was reversed by an appellate court or set aside by a district court.

TEX. FAM. CODE ANN. § 54.02(j)(4). This case concerns the last scenario contemplated by section 54.02(j)(4). Although the Juvenile Justice Code does not specifically define “due diligence,” the phrase has been defined in other contexts. *In re B.R.H.*, 426 S.W.3d at 168. “Due diligence requires the State to ‘move ahead’ or ‘reasonably explain delays.’” *Id.* It does not require the State “to ‘do everything perceivable and conceivable to avoid delay.’” *Id.* (quoting *In re N.M.P.*, 969 S.W.2d 95, 100 (Tex. App.—Amarillo 1998, no pet.)). Diligence is usually a fact question that the trial court determines in light of the circumstances of each case. *Id.*

Here, the record reflects that the alleged offense occurred on January 11, 2012. Appellant was sixteen years old at the time. Six days later, the State filed its petition in the juvenile court alleging that appellant had engaged in delinquent

conduct. Four months later, on May 11, 2012, while appellant was still sixteen years old, the State sought initial certification of appellant as an adult. On July 18, 2012, less than a month after appellant turned seventeen, the trial court issued its order waiving jurisdiction and transferring appellant's case to the district court. At the time, appellant could not immediately appeal this decision, and thus he had to wait to seek appellate review until after he had pleaded guilty in the district court and that court had rendered a judgment of conviction. Appellant turned eighteen in June 2013. On December 23, 2014, the Fourteenth Court of Appeals reversed his conviction on the basis of a defective transfer order and remanded the case to the juvenile court. Appellant was nineteen years old at that time. The Fourteenth Court's mandate issued on March 20, 2015, and the State immediately filed its amended petition seeking to re-certify appellant as an adult. By the time the juvenile court held the second transfer hearing on November 2, 2015, appellant had turned twenty years old.

The record thus reflects that the only delay attributable to the State was the nearly four-month period of time between the State's filing of the initial delinquent conduct petition in January 2012 and its filing of the motion to transfer in May 2012. Appellant has cited to no authority holding that this is an unreasonable delay, and, in fact, case law holds otherwise. *See In re B.R.H.*, 426 S.W.3d at 168 (holding that some evidence supported trial court's finding that State used due

diligence in prosecuting its case when State delayed five months after alleged offense in bringing charges against defendant and additional two-month delay before the transfer hearing also occurred).

Appellant argues that the State should be precluded from seeking re-certification under section 54.02(j) because, by seeking certification at the outset of its case, instead of foregoing the transfer process and proceeding solely in the juvenile court, the State cannot establish that it used diligence in attempting to proceeding in the juvenile court before appellant's eighteenth birthday. Essentially, appellant argues that because the State made the decision to seek certification, which ultimately led to the reversal of the trial court's transfer order on appeal, the state cannot establish this prong of section 54.02(j). We disagree.

The language of section 54.02(j)(4)(B)(iii) contemplates the exact situation present here: a situation in which the State previously sought certification, the trial court entered a transfer order, that order was then reversed by the appellate court, and now that the case has been returned to the juvenile court, the defendant is over the age of eighteen, and thus the State cannot proceed in juvenile court prior to the defendant's eighteenth birthday. *See* TEX. FAM. CODE ANN. § 54.02(j)(4)(B)(iii) (providing that juvenile court may waive jurisdiction if, in addition to other factors, court finds from preponderance of evidence that "after due diligence of the state it was not practicable to proceed in juvenile court before the 18th birthday of the

person because . . . a previous transfer order was reversed by an appellate court or set aside by a district court”). This subsection thus specifically addresses a situation in which the certification proceeding at issue is not the first certification proceeding that has occurred in the case. *See* TEX. GOV’T CODE ANN. § 311.021(2) (Vernon 2013) (providing that, when construing statute, courts presume that in enacting statute, legislature intended for entire statute to be effective). We therefore cannot agree with appellant that because the State initially chose to seek certification, which it had a statutory right to do, it now, after an appellate court has reversed the transfer order and appellant has passed his eighteenth birthday—two events that are outside the control of the State—can no longer seek recertification of appellant as an adult.

The juvenile court, in its findings of fact and conclusions of law, found that “the State could not proceed in juvenile court before the 18th birthday of [appellant] because it could not have foreseen that the previous transfer order would be reversed by an appellate court after [appellant] turned eighteen”³ and that

³ We note that the Court of Criminal Appeals’ decision in *Moon v. State*, which provided the basis for the Fourteenth Court of Appeals to reverse appellant’s prior transfer order, issued on December 10, 2014, nearly six months after appellant turned nineteen. We also note that this Court’s earlier decision in *Moon*, which was ultimately upheld by the Court of Criminal Appeals, issued on July 30, 2013, more than one year after the juvenile court in this case first waived jurisdiction and just over a month after appellant turned eighteen. Appellant’s argument that the State failed to use due diligence because the first transfer order used by the juvenile court in this case was “patently inadequate” under the authority of *Moon* is therefore unavailing.

[t]he State exercised due diligence throughout the pendency of this case by seeking discretionary transfer in a timely fashion before [appellant] turned 18, proceeding to a hearing before [appellant] turned 18, and by filing the 3rd Amended request to seek waiver of jurisdiction as soon as practicable after the Fourteenth Court of Appeals reversed the original transfer order and [appellant] returned to Harris County and appeared in this Court.

We hold that the record contains legally and factually sufficient evidence to support these findings.

B. Whether Adjudication of Alleged Offense Had Been Made

Section 54.02(j) also requires the juvenile court to find, before it may waive its jurisdiction, that “no adjudication concerning the alleged offense has been made or no adjudication hearing concerning the offense has been conducted.” TEX. FAM. CODE ANN. § 54.02(j)(3). Appellant argues that it is “undisputed that J.G. was convicted and punished for the offense of aggravated robbery” because after the juvenile court initially waived jurisdiction and transferred him to the district court, he pleaded guilty to the charged offense. He asserts that this conviction, as a matter of law, means that an “adjudication” occurred and the State cannot establish its entitlement to recertification under section 54.02(j).

The Court of Criminal Appeals has held that a judgment is void “only in very rare situations—usually due to a lack of jurisdiction.” *Nix v. State*, 65 S.W.3d 664, 668 (Tex. Crim. App. 2001). A void judgment is a nullity. *Id.* at 667–68. In the absence of a valid transfer of jurisdiction from the juvenile court, the district

court lacks jurisdiction to adjudicate the case and any resulting conviction is void. *See Ex parte Waggoner*, 61 S.W.3d 429, 431 (Tex. Crim. App. 2001); *see also Cordary v. State*, 596 S.W.2d 889, 891 (Tex. Crim. App. 1980) (“We conclude that, as appellant was never transferred from the juvenile court to the district court . . . she was never made subject to the jurisdiction of the district court. The court did not have jurisdiction to accept her plea of guilty; her conviction is void.”); *Grayless v. State*, 567 S.W.2d 216, 220 (Tex. Crim. App. 1978) (“We hold that the district court did not have jurisdiction to try the appellant for a criminal offense in the absence of a valid waiver of jurisdiction by the juvenile court.”); *Moon*, 410 S.W.3d at 378 (“Because the juvenile court abused its discretion in waiving its jurisdiction over Moon and certifying him for trial as an adult, the district court lacked jurisdiction over this case.”).

Here, after the juvenile court first waived jurisdiction and transferred appellant’s case to the district court, appellant pleaded guilty to the charge of aggravated robbery, and the district court accordingly entered a judgment of conviction. However, on appeal, the Fourteenth Court of Appeals held that the juvenile court abused its discretion in waiving jurisdiction and transferring the case. *J.G. I*, 471 S.W.3d at 4. The court stated, “Because the criminal district court never acquired jurisdiction over appellant, we vacate its judgment of conviction and dismiss the case in that court.” *Id.* Thus, because the district court

did not acquire jurisdiction over appellant, his conviction in that court is void and of no effect. *See Nix*, 65 S.W.3d at 667–68 (stating that void judgment is “a nullity”); *Ex parte Waggoner*, 61 S.W.3d at 431 (holding that in absence of valid waiver of jurisdiction from juvenile court, district court lacks jurisdiction to hear case and any resulting conviction is void). In this case, therefore, no valid adjudication concerning the alleged offense has been made.

We conclude that sufficient evidence supports the trial court’s finding that no adjudication concerning the alleged offense has been made.

C. Probable Cause that Appellant Committed Offense Alleged

Section 54.02(j) also requires that the juvenile court, before it may waive jurisdiction, determine that “there is probable cause to believe that the child before the court committed the offense alleged.” TEX. FAM. CODE ANN. § 54.02(j)(5). Appellant argues section 54.02(j) “does not authorize a juvenile judge to transfer a person who may be criminally responsible for an offense, that is, who may be a party to an offense. Rather, the judge must find that there is probable cause that the person *committed* the alleged offense, according to the statute’s plain language.” Appellant thus argues that because the evidence presented at the transfer hearing reflects that appellant was not the gunman during the alleged robbery, but was only a party to the offense, the State did not establish that probable cause existed that appellant himself committed the offense.

Appellant, however, cites no authority holding that, when determining if probable cause exists that the defendant committed the alleged offense, there is a distinction between liability as the principal actor and liability under the law of parties. Appellant cites one case, the Austin Court of Appeals' decision in *In re A.F.*, 895 S.W.2d 481 (Tex. App.—Austin 1995, no pet.), for the proposition that “[a] juvenile court cannot make a finding that a juvenile used a deadly weapon during an offense unless it finds that he was the actual party using the weapon.” In that case, the Austin Court held that where there was evidence that the defendant’s co-actor, rather than the defendant himself, was the one who used or exhibited a deadly weapon during the offense, insufficient evidence supported the juvenile court’s affirmative finding in its adjudication order that the defendant used a deadly weapon. *Id.* at 487. The Austin Court thus reformed the juvenile court’s judgment to delete the affirmative deadly weapon finding. *Id.* Appellant ignores, however, that in that case—which involved the juvenile court’s actually adjudicating the delinquent conduct issue, as opposed to its determining whether to waive jurisdiction and transfer the defendant to the district court—the State “tried [the defendant] only as a party to the delinquent conduct.” *Id.* Thus, the Austin Court did not hold that the State could not use the law of parties during proceedings in the juvenile justice system. *See id.* (“The jury charge addressed appellant’s involvement in the alleged delinquent conduct only as a party and did

not provide for a finding that appellant personally used or exhibited a deadly weapon.”); *see also In re D.L.N.*, 930 S.W.2d 253, 255–57 (Tex. App.—Houston [14th Dist.] 1996, no pet.) (considering whether sufficient evidence supported juvenile court’s determination that probable cause existed that defendant committed capital murder under law of parties).

As the State points out, under the law of parties, if the defendant “acted with the intent to promote or assist the commission of the offense by encouraging, aiding, or attempting to aid another person in committing the offense, he is just as criminally responsible for the offense as if he had directly committed [the offense] by his own conduct.” *See Montalvo v. State*, 315 S.W.3d 588, 594 (Tex. App.—Houston [1st Dist.] 2010, no pet.); *see also* TEX. PENAL CODE ANN. § 7.01(a)–(b) (Vernon 2011) (providing that “[a] person is criminally responsible as a party to an offense if the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible, or by both” and that “[e]ach party to an offense may be charged with commission of the offense”). The State presented evidence at the transfer hearing that appellant walked up to the complainant with another man, who exhibited a firearm and demanded the complainant’s property, and then fled the scene with the other man in a vehicle. An HPD officer observed appellant and his co-actor involved in a second robbery; and appellant, who was driving, crashed into an apartment complex. Officers recovered the complainant’s

property in the car with appellant, and the complainant positively identified appellant at the scene of the crash as being involved in the robbery. The State thus presented sufficient evidence that probable cause existed that appellant, under the law of parties, committed the alleged offense of aggravated robbery. *See In re C.C.*, 930 S.W.2d 929, 933 (Tex. App.—Austin 1996, no pet.) (“Probable cause exists where there are sufficient facts and circumstances to warrant a prudent person to believe the suspect committed the offense.”).

We conclude that the State presented sufficient evidence to support each of the statutory requirements for waiving jurisdiction under section 54.02(j). We hold that the trial court, therefore, did not abuse its discretion in waiving jurisdiction and entering a second order certifying appellant as an adult and transferring him to the criminal district court.

We overrule appellant’s second issue.

Conclusion

We affirm the order of the juvenile court. All pending motions are dismissed as moot.

Evelyn V. Keyes
Justice

Panel consists of Chief Justice Radack and Justices Keyes and Higley.



JUDGMENT

Court of Appeals **First District of Texas**

NO. 01-15-01025-CV

IN THE MATTER OF J.G., Appellant

Appeal from the 314th District Court of Harris County. (Tr. Ct. No. 2012-00331J).

This case is an appeal from the order waiving jurisdiction signed by the trial court on December 2, 2015. After submitting the case on the appellate record and the arguments properly raised by the parties, the Court holds that the trial court's order contains no reversible error. Accordingly, the Court **affirms** the trial court's order.

The Court **orders** that this decision be certified below for observance.

Judgment rendered May 5, 2016.

Panel consists of Chief Justice Radack and Justices Keyes and Higley. Opinion delivered by Justice Keyes.

C

Effective: September 1, 2013

Vernon's Texas Statutes and Codes Annotated [Currentness](#)

Family Code ([Refs & Annos](#))

▢ [Title 3. Juvenile Justice Code \(Refs & Annos\)](#)

▢ [Chapter 54. Judicial Proceedings \(Refs & Annos\)](#)

→→ **§ 54.02. Waiver of Jurisdiction and Discretionary Transfer to Criminal Court**

(a) The juvenile court may waive its exclusive original jurisdiction and transfer a child to the appropriate district court or criminal district court for criminal proceedings if:

(1) the child is alleged to have violated a penal law of the grade of felony;

(2) the child was:

(A) 14 years of age or older at the time he is alleged to have committed the offense, if the offense is a capital felony, an aggravated controlled substance felony, or a felony of the first degree, and no adjudication hearing has been conducted concerning that offense; or

(B) 15 years of age or older at the time the child is alleged to have committed the offense, if the offense is a felony of the second or third degree or a state jail felony, and no adjudication hearing has been conducted concerning that offense; and

(3) after a full investigation and a hearing, the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged and that because of the seriousness of the offense alleged or the background of the child the welfare of the community requires criminal proceedings.

(b) The petition and notice requirements of [Sections 53.04, 53.05, 53.06, and 53.07](#) of this code must be satisfied, and the summons must state that the hearing is for the purpose of considering discretionary transfer to criminal court.

(c) The juvenile court shall conduct a hearing without a jury to consider transfer of the child for criminal proceedings.

(d) Prior to the 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.

(e) At the transfer hearing the court may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses. At least five days prior to the transfer hearing, the court shall provide the attorney for the child and the prosecuting attorney with access to all written matter to be considered by the court in making the transfer decision. The court may order counsel not to reveal items to the child or the child's parent, guardian, or guardian ad litem if such disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future.

(f) In making the determination required by Subsection (a) of this section, the court shall consider, among other matters:

- (1) whether the alleged offense was against person or property, with greater weight in favor of transfer given to offenses against the person;
- (2) the sophistication and maturity of the child;
- (3) the record and previous history of the child; and
- (4) the prospects of adequate protection of the public and the likelihood of the rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court.

(g) If the petition alleges multiple offenses that constitute more than one criminal transaction, the juvenile court shall either retain or transfer all offenses relating to a single transaction. Except as provided by Subsection (g-1), a child is not subject to criminal prosecution at any time for any offense arising out of a criminal transaction for which the juvenile court retains jurisdiction.

(g-1) A child may be subject to criminal prosecution for an offense committed under Chapter 19 or [Section 49.08, Penal Code](#), if:

- (1) the offense arises out of a criminal transaction for which the juvenile court retained jurisdiction over other offenses relating to the criminal transaction; and
- (2) on or before the date the juvenile court retained jurisdiction, one or more of the elements of the offense under Chapter 19 or [Section 49.08, Penal Code](#), had not occurred.

(h) If the juvenile court waives jurisdiction, it shall state specifically in the order its reasons for waiver and certify its action, including the written order and findings of the court, and shall transfer the person to the appropriate court for criminal proceedings and cause the results of the diagnostic study of the person ordered under Subsection (d), including psychological information, to be transferred to the appropriate criminal prosecutor. On transfer of the person for criminal proceedings, the person shall be dealt with as an adult and in accordance with the Code of Criminal Procedure, except that if detention in a certified juvenile detention facility is authorized under [Section 152.0015](#),

[Human Resources Code](#), the juvenile court may order the person to be detained in the facility pending trial or until the criminal court enters an order under [Article 4.19, Code of Criminal Procedure](#). A transfer of custody made under this subsection is an arrest.

(h-1) If the juvenile court orders a person detained in a certified juvenile detention facility under Subsection (h), the juvenile court shall set or deny bond for the person as required by the Code of Criminal Procedure and other law applicable to the pretrial detention of adults accused of criminal offenses.

(i) A waiver under this section is a waiver of jurisdiction over the child and the criminal court may not remand the child to the jurisdiction of the juvenile court.

(j) The juvenile court may waive its exclusive original jurisdiction and transfer a person to the appropriate district court or criminal district court for criminal proceedings if:

(1) the person is 18 years of age or older;

(2) the person was:

(A) 10 years of age or older and under 17 years of age at the time the person is alleged to have committed a capital felony or an offense under [Section 19.02, Penal Code](#);

(B) 14 years of age or older and under 17 years of age at the time the person is alleged to have committed an aggravated controlled substance felony or a felony of the first degree other than an offense under [Section 19.02, Penal Code](#); or

(C) 15 years of age or older and under 17 years of age at the time the person is alleged to have committed a felony of the second or third degree or a state jail felony;

(3) no adjudication concerning the alleged offense has been made or no adjudication hearing concerning the offense has been conducted;

(4) the juvenile court finds from a preponderance of the evidence that:

(A) for a reason beyond the control of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person; or

(B) after due diligence of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person because:

(i) the state did not have probable cause to proceed in juvenile court and new evidence has been found since the 18th birthday of the person;

(ii) the person could not be found; or

(iii) a previous transfer order was reversed by an appellate court or set aside by a district court; and

(5) the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged.

(k) The petition and notice requirements of [Sections 53.04](#), [53.05](#), [53.06](#), and [53.07](#) of this code must be satisfied, and the summons must state that the hearing is for the purpose of considering waiver of jurisdiction under Subsection (j). The person's parent, custodian, guardian, or guardian ad litem is not considered a party to a proceeding under Subsection (j) and it is not necessary to provide the parent, custodian, guardian, or guardian ad litem with notice.

(l) The juvenile court shall conduct a hearing without a jury to consider waiver of jurisdiction under Subsection (j). Except as otherwise provided by this subsection, a waiver of jurisdiction under Subsection (j) may be made without the necessity of conducting the diagnostic study or complying with the requirements of discretionary transfer proceedings under Subsection (d). If requested by the attorney for the person at least 10 days before the transfer hearing, the court shall order that the person be examined pursuant to [Section 51.20\(a\)](#) and that the results of the examination be provided to the attorney for the person and the attorney for the state at least five days before the transfer hearing.

(m) Notwithstanding any other provision of this section, the juvenile court shall waive its exclusive original jurisdiction and transfer a child to the appropriate district court or criminal court for criminal proceedings if:

(1) the child has previously been transferred to a district court or criminal district court for criminal proceedings under this section, unless:

(A) the child was not indicted in the matter transferred by the grand jury;

(B) the child was found not guilty in the matter transferred;

(C) the matter transferred was dismissed with prejudice; or

(D) the child was convicted in the matter transferred, the conviction was reversed on appeal, and the appeal is final; and

(2) the child is alleged to have violated a penal law of the grade of felony.

(n) A mandatory transfer under Subsection (m) may be made without conducting the study required in discretionary transfer proceedings by Subsection (d). The requirements of Subsection (b) that the summons state that the purpose of the hearing is to consider discretionary transfer to criminal court does not apply to a transfer proceeding under Subsection (m). In a proceeding under Subsection (m), it is sufficient that the summons provide fair notice that the purpose

of the hearing is to consider mandatory transfer to criminal court.

(o) If a respondent is taken into custody for possible discretionary transfer proceedings under Subsection (j), the juvenile court shall hold a detention hearing in the same manner as provided by [Section 54.01](#), except that the court shall order the respondent released unless it finds that the respondent:

- (1) is likely to abscond or be removed from the jurisdiction of the court;
- (2) may be dangerous to himself or herself or may threaten the safety of the public if released; or
- (3) has previously been found to be a delinquent child or has previously been convicted of a penal offense punishable by a term of jail or prison and is likely to commit an offense if released.

(p) If the juvenile court does not order a respondent released under Subsection (o), the court shall, pending the conclusion of the discretionary transfer hearing, order that the respondent be detained in:

- (1) a certified juvenile detention facility as provided by Subsection (q); or
- (2) an appropriate county facility for the detention of adults accused of criminal offenses.

(q) The detention of a respondent in a certified juvenile detention facility must comply with the detention requirements under this title, except that, to the extent practicable, the person shall be kept separate from children detained in the same facility.

(r) If the juvenile court orders a respondent detained in a county facility under Subsection (p), the county sheriff shall take custody of the respondent under the juvenile court's order. The juvenile court shall set or deny bond for the respondent as required by the Code of Criminal Procedure and other law applicable to the pretrial detention of adults accused of criminal offenses.

(s) If a child is transferred to criminal court under this section, only the petition for discretionary transfer, the order of transfer, and the order of commitment, if any, are a part of the district clerk's public record.

CREDIT(S)

Acts 1973, 63rd Leg., p. 1460, ch. 544, § 1, eff. Sept. 1, 1973. Amended by Acts 1975, 64th Leg., p. 2156, ch. 693, § 16, eff. Sept. 1, 1975; [Acts 1987, 70th Leg., ch. 140, §§ 1 to 3, eff. Sept. 1, 1987](#); [Acts 1995, 74th Leg., ch. 262, § 34, eff. Jan. 1, 1996](#); [Acts 1999, 76th Leg., ch. 1477, § 8, eff. Sept. 1, 1999](#); [Acts 2009, 81st Leg., ch. 1354, § 1, eff. Sept. 1, 2009](#); [Acts 2011, 82nd Leg., ch. 1087 \(S.B. 1209\), § 4, eff. Sept. 1, 2011](#); [Acts 2011, 82nd Leg., ch. 1103 \(S.B. 1617\), § 1, eff. Sept. 1, 2011](#); [Acts 2013, 83rd Leg., ch. 1299 \(H.B. 2862\), § 16, eff. Sept. 1, 2013](#).

Current through the end of the 2013 Third Called Session of the 83rd Legislature

Vernon's Texas Statutes and Codes Annotated

Penal Code (Refs & Annos)

Title 2. General Principles of Criminal Responsibility

Chapter 7. Criminal Responsibility for Conduct of Another (Refs & Annos)

Subchapter A. Complicity

V.T.C.A., Penal Code § 7.02

§ 7.02. Criminal Responsibility for Conduct of Another

Currentness

(a) A person is criminally responsible for an offense committed by the conduct of another if:

(1) acting with the kind of culpability required for the offense, he causes or aids an innocent or nonresponsible person to engage in conduct prohibited by the definition of the offense;

(2) acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense; or

(3) having a legal duty to prevent commission of the offense and acting with intent to promote or assist its commission, he fails to make a reasonable effort to prevent commission of the offense.

(b) If, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, all conspirators are guilty of the felony actually committed, though having no intent to commit it, if the offense was committed in furtherance of the unlawful purpose and was one that should have been anticipated as a result of the carrying out of the conspiracy.

Credits

Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, § 1.01, eff. Sept. 1, 1994.

V. T. C. A., Penal Code § 7.02, TX PENAL § 7.02

Current through the end of the 2015 Regular Session of the 84th Legislature

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Penal Code (Refs & Annos)

Title 7. Offenses Against Property (Refs & Annos)

Chapter 29. Robbery (Refs & Annos)

V.T.C.A., Penal Code § 29.03

§ 29.03. Aggravated Robbery

Currentness

(a) A person commits an offense if he commits robbery as defined in Section 29.02, and he:

(1) causes serious bodily injury to another;

(2) uses or exhibits a deadly weapon; or

(3) causes bodily injury to another person or threatens or places another person in fear of imminent bodily injury or death, if the other person is:

(A) 65 years of age or older; or

(B) a disabled person.

(b) An offense under this section is a felony of the first degree.

(c) In this section, "disabled person" means an individual with a mental, physical, or developmental disability who is substantially unable to protect himself from harm.

Credits

Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1989, 71st Leg., ch. 357, § 2, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, § 1.01, eff. Sept. 1, 1994.

§ 29.03. Aggravated Robbery, TX PENAL § 29.03

V. T. C. A., Penal Code § 29.03, TX PENAL § 29.03
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Vernon's Texas Statutes and Codes Annotated

Constitution of the State of Texas 1876 (Refs & Annos)

Article I. Bill of Rights (Refs & Annos)

Vernon's Ann. Texas Const. Art. 1, § 19

§ 19. Deprivation of life, liberty, etc.; due course of law

Currentness

Sec. 19. No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

Vernon's Ann. Texas Const. Art. 1, § 19, TX CONST Art. 1, § 19

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United States Code Annotated

Constitution of the United States

Annotated

Amendment V. Grand Jury; Double Jeopardy; Self-Incrimination; Due Process; Takings

U.S.C.A. Const. Amend. V full text

Amendment V. Grand Jury Indictment for Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process of Law; Takings without Just Compensation

Currentness

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

<Historical notes and references are included in the full text document for this amendment.>

<For Notes of Decisions, see separate documents for clauses of this amendment:>

<USCA Const. Amend. V--Grand Jury clause>

<USCA Const. Amend. V--Double Jeopardy clause>

<USCA Const. Amend. V--Self-Incrimination clause>

<USCA Const. Amend. V-- Due Process clause>

<USCA Const. Amend. V--Takings clause>

U.S.C.A. Const. Amend. V full text, USCA CONST Amend. V full text
Current through P.L. 114-221.

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United States Code Annotated
Constitution of the United States
Annotated
Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement

U.S.C.A. Const. Amend. XIV-Full Text

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Currentness

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

<see USCA Const Amend. XIV, § 1-Citizens>

<see USCA Const Amend. XIV, § 1-Privileges>

<see USCA Const Amend. XIV, § 1-Due Proc>

<see USCA Const Amend. XIV, § 1-Equal Protect>

<sections 2 to 5 of this amendment are displayed as separate documents,>

<see USCA Const Amend. XIV, § 2,>

<see USCA Const Amend. XIV, § 3,>

<see USCA Const Amend. XIV, § 4,>

<see USCA Const Amend. XIV, § 5,>

U.S.C.A. Const. Amend. XIV-Full Text, USCA CONST Amend. XIV-Full Text
Current through P.L. 114-221.

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CITY | STATE

County may relocate jailed teens

By Cindy George

Harris County Sheriff's Office executives have been in talks with officials 170 miles north of Houston about possibly transferring 17-year-old inmates to a vacant Limestone County lockup to separate them from adults as required by the federal Prison Rape Elimination Act.

There is nothing official, though, and the Limestone County Detention Center is but one

of many options under consideration for dozens of youthful defendants in custody, according to Ryan Sullivan, a spokesman for the sheriff's office.

Sullivan said he believes Limestone County officials eager to tout the potential return of some jobs to a community where the prison was closed in 2013 "put the cart before the horse" in publicly discussing possible economic development.

Juvenile justice advocates and experts say any

plan to ship teens that far from Harris County punishes youngsters and their families even more.

The 1,000-bed Limestone County Detention Center in Groesbeck has several structures and is privately operated by the Louisiana-based LaSalle Corrections. The prison facility is separate from the county jail.

"It's never as convenient to keep inmates outside your county, but sometimes it's necessary," Limestone County Judge

Daniel Burkeen said by phone. "If they want to separate them, they're going to have to send them somewhere and we have a good facility. We have multiple buildings so it's easy for us to provide that service."

The detention center lost its previous occupants after population counts dropped with federal agencies. Fewer inmates led to the end of a contract with the federal Bureau of Prisons and dwindling detainees from U.S. Immi-

gration and Customs Enforcement finally closed the facility three years ago, Burkeen said.

Hundreds of local folks lost their jobs.

Harris County, meanwhile, has been cited for violations of the Prison Rape Elimination Act, known as PREA.

During a multi-day inspection that began in late November 2015, the Department of Justice-certified prison rape auditor found that Har-

Sheriff continues on A4

Sheriff in talks to transfer jailed teens to Central Texas

Sheriff from page A3

ris Cotnty continued to house its 17-year-olds with adult offenders at the 701 San Jacinto lockup. And in May, a federal inspector reported that Harris County had no immediate plan to comply with the act.

As a corrective action, the teens were moved to the 1200 Baker facility "where they are still housed with adult offenders in a non-compliant fashion," the report said, adding the sheriff's office officials had not developed a solution.

Sullivan said current options are limited in Harris County.

"The physical layout of our building really makes it impossible to comply because we don't have a separate maximum security space that would keep 17-year-olds out of sight and sound of adults," Sullivan said Thursday.

Hardships on families

Discussions with Limestone County officials have included Harris County Sheriff Ron Hickman, his chief deputy and at least one representative of the Harris County Attorney's Office, Sullivan said.

The transfer of 100 to 200 pretrial teens with unresolved criminal cases to Limestone County could upend their access to court dates and family visits.

Michele Deitch, a juvenile justice expert and senior public policy lecturer at the LBJ School of Public Affairs at the University of Texas at Austin, said she doesn't think Houston-area teens should be traded for economic development in a county a three-hour

drive away. Most states do not consider 17-year-olds as adults in the criminal justice system.

"It points to the need for the Legislature to raise the age for criminal responsibility from 17 to 18 so that anyone under the age of 18 can be handled through the juvenile system," she said. "While they're sitting in jail, they are not getting access to educational programs or services that they need."

Elizabeth Henneke, a policy attorney with the Texas Criminal Justice Coalition, said distant pretrial housing creates a challenge for adequate defense and family connection as well as access for questioning by prosecutors and other members of law enforcement.

"I appreciate that Harris County is working diligently to comply with PREA because PREA is meant to protect kids and make sure that they are not assaulted," she said, adding that almost every 17-year-old defendant is in custody on a nonviolent offense. "Imagine the hurdles, the transportation costs. The Constitution and the law require that those 17-year-olds have their parents with them whenever they're interrogated. It's going to increase the costs of attorneys' time and it's going to cause huge hardships on the families."

Sandra Guerra Thompson, a professor at the University of Houston Law Center, said a different Harris County bail structure that offers pretrial release on personal recognition for adults and juveniles would mean more

empty beds in Houston.

"They would save so much money and have plenty of room to isolate the juveniles within the Harris County jail," she said.

Law a 'challenge'

A Texas Commission on Jail Standards official performed a preliminary inspection of the Limestone County Detention Center in July and officials expect to return soon for a final look that will allow the facility to start accepting residents, said Brandon Wood, the agency's executive director.

He added that he is not aware of any other Texas county that has as many 17-year-old inmates as Harris, though the federal law "is a challenge for quite a few" jurisdictions.

Burkeen, the Limestone County judge, said LaSalle has trained about four dozen employees to get the facility ready for the jail commission inspection and certification required for occupancy. He expects to receive about 180 teens from Harris County at a daily cost per inmate to fall within the "market rate" of \$38 to \$44.

"We pay the expenses of the facility, including the contractor," the county judge said.

Tim Kurpiewski, the chief financial officer for LaSalle's Texas operations, said his company intends to respond if and when Harris County requests proposals.

"We have room and are willing to take those 17-year-olds," he said.

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