

## Various Statutes Applicable to Motions for Early Release from Detention

I wish I could direct you to one statute. But, alas, no such stand-alone statute exists. Here is a road map. Supporting statutes follow.

File your motion (retained) or “formal request” (allowable if court appointed).

Serve a copy of Motion on the opposing counsel if you are retained. Copy the State if you are court appointed (the Family Code does not speak to copying the State, but ex parte communications are not permitted).

Timing of hearing – depends if you are court appointed or retained.

Retained – give other party at least 3 calendar days’ notice.

Court appointed after initial hearing – de novo. Court must set case within two business days.

### **A. Which Rule of Procedure? – My answer: I believe the Civil Rules apply**

Family Code Section 51.17, rules of procedure and evidence

Sec. 51.17. PROCEDURE AND EVIDENCE. (a) Except as provided by Section 56.01(b-1) and except for the burden of proof to be borne by the state in adjudicating a child to be delinquent or in need of supervision under Section 54.03(f) or otherwise when in conflict with a provision of this title, the Texas Rules of Civil Procedure govern proceedings under this title.

(b) Discovery in a proceeding under this title is governed by the Code of Criminal Procedure and by case decisions in criminal cases.

(c) Except as otherwise provided by this title, the Texas Rules of Evidence applicable to criminal cases and Articles 33.03 and 37.07 and Chapter 38, Code of Criminal Procedure, apply in a judicial proceeding under this title.

## **B. Retained: File a Motion and serve opposing counsel no later than three days before the hearing**

Rules of Civil Procedure

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### **RULE 21. FILING AND SERVING PLEADINGS AND MOTIONS**

- (a) Filing and Service Required. Every pleading, plea, motion, or application to the court for an order, whether in the form of a motion, plea, or other form of request, unless presented during a hearing or trial, must be filed with the clerk of the court in writing, must state the grounds therefor, must set forth the relief or order sought, and at the same time a true copy must be served on all other parties, and must be noted on the docket.
- (b) Service of Notice of Hearing. An application to the court for an order and notice of any hearing thereon, not presented during a hearing or trial, must be served upon all other parties not less than three days before the time specified for the hearing, unless otherwise provided by these rules or shortened by the court.

### **RULE 4. COMPUTATION OF TIME**

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Saturdays, Sundays, and legal holidays shall not be counted for any purpose in any time period of five days or less in these rules, except that Saturdays, Sundays, and legal holidays shall be counted for purpose of the three-day periods in Rules 21 and 21a, extending other periods by three days when service is made by mail.

## **C. Court Appointed after the initial hearing: File a “Formal Request”**

Family Code Section 54.01, applies to court appointed attorney not present at initial hearing.

(n) An attorney appointed by the court under Section 51.10(c) because a determination was made under this section to detain a child who was not represented by an attorney may request on behalf of the child and is entitled to a de novo detention hearing under this section. The attorney must make the request not later than the 10th working day after the date the attorney is appointed. The hearing must take place not later than the second working day after the date the attorney filed a formal request with the court for a hearing.