



**In The  
Court of Appeals  
Seventh District of Texas at Amarillo**

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No. 07-19-00424-CV

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**EX PARTE I.A., A CHILD, APPELLANT**

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On Appeal from the 99th District Court  
Lubbock County, Texas,  
Trial Court No. 2019-537,144, Honorable Ruben Gonzales Reyes, Presiding

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October 16, 2020

**CONCURRING OPINION**

Before QUINN, C.J., and PARKER and DOSS, JJ.

I join the majority’s opinion and disposition of this appeal but write separately to express concerns about the delay in adjudicating the charge of delinquency. As the majority observes, statute provides that the final adjudication hearing “shall not be later than 10 working days after the day the petition was filed if . . . the child is in detention.” TEX. FAM. CODE ANN. § 53.05(b)(1) (West 2014). The petition accusing appellant of engaging in criminal acts was filed on July 23, 2019, but no final hearing was held within the ensuing ten working days. Indeed, the record fails to indicate that one was even scheduled before or after appellant sought habeas relief.

On the other hand, our juvenile justice system had the time to hold multiple detention hearings during the ensuing months, since detention orders only have a ten working day life. See TEX. FAM. CODE ANN. § 54.01(h) (stating that a detention order extends to the conclusion of the disposition hearing, if there is one, but in no event for more than 10 working days; further detention orders may be made following subsequent detention hearings; and each subsequent detention order shall extend for no more than 10 working days). Those participating in them no doubt knew of the statutory directive to finally adjudicate appellant's delinquency within 10 working days of the petition. They no doubt knew that such a hearing had yet to occur, for why else would there need to be consecutive detention hearings. However, the record reflects little being done by the system to secure appellant's entitlement to the speedy disposition mandated by both the Constitution and § 53.05(b). See *L. L. S. v. State*, 565 S.W.2d 252, 255 (Tex. Civ. App.—Dallas 1978, writ ref'd n.r.e.) (construing the statutory period as a time for appearance by both parties and holding that the trial court has discretion in scheduling the actual hearing, subject to the constitutional right to a speedy trial).

It may well be that various appellate courts deemed the ten-day period of § 53.05(b) merely directory. See *id.*; accord *In re J.L.W.*, 919 S.W.2d 841, 842–43 (Tex. App.—El Paso 1996, no pet.) (so holding and joining the authorities cited therein). Their ruling, though, concerned jurisdiction and its loss if the time period went unheeded. *Id.* They did not hold that the juvenile justice system was free to ignore the legislative mandate. On the contrary, it remains mandatory for non-jurisdictional purposes. See *L.L.S. v. State*, 565 S.W.2d at 255 (stating that though directory for jurisdictional purposes, “[t]he requirement that a hearing be set within ten days after the filing of the

petition is mandatory”). Furthermore, neglecting to heed it may constitute an instance of abused discretion. See *In re J.L.W.*, 919 S.W.2d at 843 (stating that “[e]ven though we have concluded that the ten-day requirement is not mandatory, we will nevertheless examine whether the trial court abused its discretion in not holding the . . . hearing until twenty-nine days after the petition had been filed”).

Under certain circumstances, pretrial detention may equate to punishment violative of an accused’s right to due process. See *Bell v. Wolfish*, 441 U.S. 520, 535–36, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979). Though we have not found that to have occurred here, the unexplained delay in affording appellant a speedy disposition per § 53.05(b) is of concern. And, it strains credulity to chalk-it-off by merely saying that the time period is “directory.” Directory or not, it specifies the requisite period in which our juvenile justice system must act. While the system may not lose jurisdiction to adjudicate whether the youth engaged in delinquency, it cannot simply ignore the constitutional and statutory necessity for a speedy resolution of that question.<sup>1</sup>

Brian Quinn  
Chief Justice

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<sup>1</sup> In so admonishing, I do not blame any particular party or body. As part of the juvenile justice system, the courts (trial and appellate), prosecution, and defense counsel must assure that the system does not fail the wards assigned to it.