DETERMINATE SENTENCE: Release and Transfer Hearings

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Purpose of Determinate Sentencing Statutes

 Determinate sentencing statutes were enacted to provide an alternative to the pre-existing criminal and juvenile systems. The criminal system strives to maintain our societal structure and to protect the safety of citizens by punishing persons who violate certain basic rules of conduct. The primary purpose of the juvenile system is "to provide for the care, the protection, and the wholesome moral, mental, and physical development of children...." Tex. Fam. Code Ann. 51.01

Richard Racehorse Haynes

• Always Do What A Real Lawyer Would Do

Notice of Hearing

- From the court
 - Time and Place
 - Does not have to be in writing
- Failure to give notice (except child and prosecutor)
 - Does not affect validity
 - But record must show reasonable efforts made by the court and whereabouts unknown

Representation

- Right to an Attorney
- · Appointment of GAL, if no parent
- Right to Expert make a sufficient showing to require the appointment of a defense expert (Ake v. Oklahoma; Due Process Clause)
- Failure to request expert assistance can be ineffective assistance of counsel (*Strickland v. Washington counsel has a duty to investigate*)

Evidence

- Written reports
- At least one day before hearing, the court, shall provide the attorney access to all written material
- TYC employees may submit written reports to the court along with probation officers, court employee, professional consultants
- Hearsay permitted

Confrontation

- In the Matter of M.R., 5 S.W.3d 879 (Tex.App.—San Antonio 1999, pet. denied)
 - Verified Motion for Continuance after receiving material day before hearing, invoking client's right to confrontation
 - Court overruled and proceeded with hearing
 - Court of Appeals held juvenile's right to confrontation had been violated

In the Matter of M.R.

- Child argued that more time was needed to identify the persons supplying the information and to secure their presence at the hearing
- Child was quite literally denied the chance to confront his accusers.
- "It would have made no difference if child had been tried in abstentia and the judge had simply read [Cucolo's report] to himself. This situation contravenes the spirit of due process."

TYC Procedures - Early Transfer

- At least 16 years old
- Spent at least 6 months at TYC
- · Displayed chronic disruptive behavior
- Juvenile's record is reviewed by a special committee
- Psychological evaluation to determine amenability to treatment and risk of reoffending

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TYC Procedures – Early Transfer

- Juvenile is interviewed and allowed to give his perception of his progress
- Committee sends a report to 3 levels of executive administrators and upon approval by all three, a district court hearing on the early transfer motion is requested

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- Summary report will be 3-4 pages
- Client was at TYC for at least 6 months file will be 100's of pages YOU MUST READ IT
- What was the Chronic Disruptive Behavior?
 - How many security unit referrals?
 - What were they for?
 - How many were self referrals?
 - How many were for minor things (doodling)

PREPARATION

- Who was on the "Special Committee" and how many agreed with recommendation? Who didn't and why?
- What is your client's psychiatric or psychological history/ how many times were medications changed? How do medication changes correspond to disruptive behavior?

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PREPARATION

- What does client say and what was his/her perception of progress?
- Do you need an expert, must investigate to evaluate?
- What other witnesses do you need?