

DETERMINE SENTENCE

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POLICE SAY GIRL, 13, KILLED MAN OVER MILK

MILWAUKEE (Aug. 11) - A long-simmering feud between a 13-year-old girl and her step-grandfather erupted after the man allegedly poured her milk down the drain, prompting the girl to fatally stab him in the neck, court documents said. L.T. B., who allegedly threatened her step-father with knives before, told an officer who responded, "I killed him," and said to a neighbor, "I'm not afraid to go to jail for this," according to the criminal complaint against her.

Boy, 12, faces grown up murder charges

(CNN) -- On a chilly morning in February 2009, state police found 26-year-old Kenzie Houk in her bed with a bullet through her head. She was eight months pregnant.

The search for her killer ended with the most surprising murder suspect residents of Wampum, Pennsylvania, had ever seen: 11-year-old Jordan Brown, the son of the victim's fiancé.

He is one of the youngest suspects in the country to be charged with homicide, legal experts say. There are two counts of homicide, one covering the fetus.



14 YEAR OLD CHARGED WITH MOTHERS MURDER

BASTROP COUNTY, Texas (KXAN) - The Bastrop County Sheriff's officials say a woman missing from McDade may have been shot to death by her teen daughter and the girl's boyfriend - both of whom are in jail on murder charges. Tracy Lynn Bellard's daughter, 14, and Joseph Dwayne Douglas, 18, are charged with first-degree murder in her death - even as deputies work to positively identify the charred remains found on the boy's property in Smithville late Monday

DETERMINATE SENTENCE

- Texas Statute first in Country
- Deals with violent offenders without certification
- Compromise to lowering age of certification to 13

TEXAS CERTIFICATIONS POST SB 103

2007	202
2008	245
2009	227
2010	229

Determinate sentencing is a hybrid system whereby juveniles who have been adjudicated of the most serious offenses are given a sentence which includes a term of confinement in the Texas Department of Criminal Justice but begins in the juvenile system.

PURPOSE AND GOAL

- Juveniles given opportunity to change
- Rehabilitation with threat of incarceration
- Juvenile System handles first

AGE REQUIREMENTS

Unlike certification there is no minimum age requirement for determinate sentence cases. Juveniles beginning at the age of 10 are eligible for any determinate sentence offense.

ORIGINAL OFFENSES

- Capital Murder
- Attempted Capital Murder
- Murder
- Aggravated Kidnapping
- Aggravated Sexual Assault
- Deadly Assault on a law enforcement officer

§53.045





**Determinate Sentencing:
Invoking the Statute**

- ✓ Prosecutor's Decision
- ✓ Juvenile Court Petition Filed
- ✓ Presentation to the Grand Jury
- ✓ Grand Jury Approval/Rejection
- ✓ Approval = Probable Cause Finding
- ✓ Written Certificate of Approval



GRAND JURY PRACTICE

The grand jury has all the powers to investigate the facts and circumstances relating to a petition submitted under this section as it has to investigate other criminal activity. 53.045(c)

GRAND JURY PRACTICE

If the grand jury votes to take no action on an offense referred to the grand jury under this section, the prosecution attorney may not file a petition under Section 53.04 concerning the offense unless the same or a successor grand jury approves the filing of the petition

ADJUDICATION /TRIAL

- ✓ County Judges, Referees/Masters
≠ hear DS case
- ✓ Mirror of felony proceedings
- ✓ Right to 12-person jury
- ✓ Right to jury at punishment stage
- ✓ Unanimous verdict required
- ✓ Lesser included or not covered offenses = regular delinquency proceeding

DISPOSITION

- ❖ Jury Decision
 - ❖ 12 members
 - ❖ mistrial
- ❖ Probation
 - ❖ Charge
 - ❖ Sentence of 10 years or less



MINIMUM LENGTHS OF STAY

- Capital Murder 10 years
- First Degree 3 years
- Aggravated Controlled Substance Felony 3 years
- Second Degree Felony 2 years
- Third Degree Felony 1 year

PAROLE

- TYC parole
 - Released before 19
 - Released after 19
 - Adult parole, Section 61.084 Human Resources Code
- Adult parole
 - TYC parole transferred at 19

TRANSFER/ RELEASE

- Section 54.11
 - Statute Before June 2007
 - Transfer prior to 21st birthday or release to TDCJ parole
 - Statute After June 2007
 - Transfer prior to 19th birthday or release to TDCJ parole
- Actually Transfer to TDCJ
 - 16 or over
 - 6 months at TYC
 - TYC regulations

Determinate Sentence Probation

- The court or jury may award probation in a determinate sentence case.
- Court or jury may give determinate sentence probation for up to 10 years.
- If Probation extends past 18th birthday-court may :
 - Terminate probation
 - Transfer case to district court



TRANSFERRED OFFENDERS HOUSING

Males

Clemens Unit, Brazoria Texas

Females

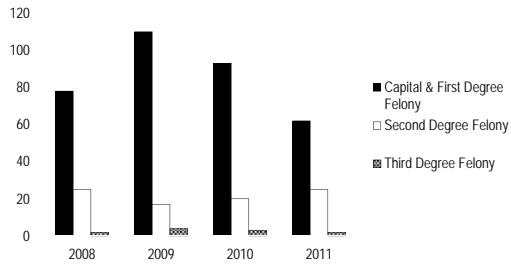
Hilltop Unit, Gatesville, Texas

**HOE SQUAD
CLEMENS UNIT**





DETERMINATE SENTENCE COMMITMENTS



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DETERMINATE SENTENCING A GENERAL OVERVIEW

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SAN ANTONIO, TEXAS

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Determinate Sentencing & Certifications in Texas a General Overview

I. Introduction Determinate Sentence

Determinate sentencing is a hybrid dispositional option whereby juveniles who have been adjudicated for severe criminal offenses are given a sentence which includes a term of confinement in the Texas Department of Criminal Justice but begins in the juvenile system.¹ Determinate sentencing arose in Texas as a result of the perception of increasing serious violent criminal acts being committed by juveniles.² Prior to the enactment of the Determinate Sentence Act of 1987 juveniles under the age of fifteen could not be certified to stand trial as adults nor receive a commitment to the Texas Youth Commission beyond the age of twenty-one.³ Numerous legislative options were proposed to address this issue with most centering on reducing the age a juvenile was eligible for transfer to the adult system.⁴ As initially promulgated in 1987 the determinate sentence legislation covered the six most serious felony offenses: Capital Murder, Murder, Aggravated Kidnapping, Aggravated Sexual Assault, Deadly Assault on a law enforcement officer, Criminal Attempt to Commit Capital Murder.⁵

¹ See, Robert O. Dawson, TEXAS JUVENILE LAW § 21 (6th ed. 2004).; Dawson, Texas Blended Sentencing: An Empirical Study of the Uses of Determinate Sentencing 17 State Bar of Texas Section Report Juvenile Law 5-17 (No. 2, June 2003).

² Dawson, Texas Blended Sentencing: An Empirical Study of the Uses of Determinate Sentencing, 17 State Bar of Texas Section Report Juvenile Law 5-17 (No. 2, June 2003).

³ *Id.*

⁴ See Robert O. Dawson, *The Third Justice System: The New Juvenile—Criminal System of Determinate Sentencing for the Youthful Violent Offender in Texas*, 19 St. Mary's L.J. 943-1016 (1988).

⁵ Robert O. Dawson, TEXAS JUVENILE LAW § 21

Enacted in 1987 the Texas Determinate Statute was the first of its kind in the country.⁶ Currently, other states have enacted similar statutes which are commonly referred to as blended or mixed sentences.

Under the initial determinate sentence act a youth would receive a sentence where the first portion would be served at the Texas Youth Commission (TYC). Before the juvenile reached his eighteenth birthday a hearing would be conducted in the committing court to ascertain whether the juvenile would be released on TYC parole, discharged from TYC altogether or transferred to the Institutional Division of the Texas Department of Criminal Justice to serve the remainder of the juvenile's sentence.⁷

Beginning in 1996 widespread changes to the Determinate Sentence Act took effect.⁸ First the range of offenses eligible for determinate sentencing were greatly expanded. The list of offenses currently includes:

- Murder
- Attempted murder
- Capital murder
- Attempted capital murder
- Manslaughter
- Intoxication manslaughter
- Aggravated kidnapping
- Attempted aggravated kidnapping
- Aggravated sexual assault
- Sexual assault
- Attempted sexual assault

(6th ed. 2004).

⁶ *Id.*

⁷ TEX. FAM. CODE §54.11 (before 1995 amendment).

⁸ Dawson, Texas Blended Sentencing: An Empirical Study of the Uses of Determinate Sentencing, 17 State Bar of Texas Section Report Juvenile Law 5-17 (No. 2, June 2003).

- Aggravated assault
- Aggravated robbery
- Attempted aggravated robbery
- Felony injury to a child, elderly, or disabled person
- Felony deadly conduct
- Aggravated or first-degree controlled substance felony
- Criminal solicitation of a capital or first-degree felony
- Second-degree felony indecency with a child
- Criminal solicitation of a minor
- First degree felony arson
- Habitual felony conduct (three consecutive felony adjudications)
- Criminal Conspiracy.⁹

Second, the range of punishments was changed to account for the various levels of offenses. For third degree felonies the maximum punishment is ten years; second degree felonies twenty years and a maximum of forty years for first degree felonies and capital offenses.¹⁰

Grand Jury

When seeking to proceed under the Determinate Sentence Act a state prosecutor has essentially unfettered discretion.¹¹ However the petition seeking a determinate sentence must be approved by the grand jury.¹² In considering a case for approval nine members of the grand jury must vote approval.¹³ If nine members do not vote approval the State can not proceed under the act. If the grand jury does reject approval the State can still proceed with the prosecution of

the proceeding either with an Original Petition without a determinate sentence or seek certification if appropriate.

Upon approval section 53.045(d) states the “fact of approval shall be certified to the juvenile court and the certification shall be entered in the record of the case”¹⁴

Adjudication Hearing

The requirements for an adjudication hearing for a indeterminate sentence case and an determinate sentence case are the same except for a few differences. In a determinate sentence case only certain judges can preside over determinate sentence cases. Juvenile court referees, associate judges or constitutional county court judges are prohibited from hearing these cases.¹⁵ Additionally, the jury composition in determinate sentence cases must consist of 12 members even when a county court has jurisdiction.¹⁶

Disposition Hearings

In normal delinquency hearings a juvenile has no right to a jury to determine disposition.¹⁷ In determinate sentence proceedings juveniles have the right to have a jury determine sentencing.¹⁸ A requirement for having a jury in the disposition hearing to determine sentencing is that the respondent request or elects in writing before the start of voir dire his desire for a jury.¹⁹

Probation

⁹ TEX. FAM. CODE §53.045(a).

¹⁰ TEX. FAM. CODE §54.04(3)

¹¹ *In the Matter of S.B.C.*, 805 S.W.2d 1 (Tex.App.—Tyler 1991, writ denied).

¹² TEX. FAM. CODE §53.045(a); §54.04(3).

¹³ TEX. FAM. CODE §53.045(b).

¹⁴ TEX. FAM. CODE §53.045(d).

¹⁵ TEX. FAM. CODE §54.10(c); TEX. FAM. CODE §51.04(c).

¹⁶ TEX. FAM. CODE §54.03(c).

¹⁷ *McKeiver Et. Al. v. Pennsylvania*, 403 U.S. 528 (1971); TEX. FAM. CODE §54.04.

¹⁸ TEX. FAM. CODE §54.04(a).

¹⁹ TEX. FAM. CODE §54.04(a).

Juveniles sentenced under a determinate sentence are eligible for probation if the sentence received is less than ten years.²⁰ This provision was adopted in 1999 with the legislative amendments to the Act. Before this provision change probation and juvenile court jurisdiction of determinate sentence terminated upon a juvenile respondent reaching eighteen years old.²¹ Determinate sentence probation was a major revision of the Act; the ten year probation period mirrors probation options available in adult cases.²² A ten year probation period gives the juvenile court and juries a wider sentencing option and provides for a better handling of case dispositions. Prior to the changes enacted regarding probation courts were limited in granting probation since probation terminated at the juvenile's eighteenth birthday; accordingly, it was more probable that a term of years was imposed without probation in those circumstances. Further juries did not impose any of the terms or conditions of probation and both the court and jury merely granted or denied probation.

Presently, as in adult cases, once a respondent is assessed a sentence of ten years or less and probation is awarded, the judge makes the determination of the length of probation.²³ If probation is granted juvenile probation will provide supervision. Probation will expire at the juvenile's eighteenth birthday unless the prosecuting attorney requests a hearing prior to the child's eighteenth birthday and the court orders probation transferred to adult probation. Once transferred adult probation will provide supervision.

Parole and Minimum Lengths of Stay

The determinate sentence statute allows TYC the ability to parole juveniles without permission from the court once a minimum length of stay is served. For Capital Murder the minimum length of stay is ten years, for first degree felonies the minimum length of stay is three years; two years for a second degree and one year for a third degree felony.²⁴ If a child is released on parole prior to reaching his or her nineteenth birthday the TYC will supervise him or her until the age of nineteen at which time supervision will be transferred to adult parole.²⁵ If the youth is paroled after the age of nineteen, the youth is immediately placed on adult parole to serve the remainder of the sentence.

Transfer and Hearings

Under current law the Texas Youth Commission may request the committing juvenile court to conduct a hearing to determine whether to transfer a juvenile sentenced under the Act to prison.²⁶ Section 61.079 states in part:

1. [a]fter a child sentenced to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, becomes sixteen years of age but before the child becomes 19 years of age, the commission may refer the child to the juvenile court that entered the order of commitment for approval of the child's transfer to the institutional division of the Texas Department of Criminal Justice if:
 - a. the child has not completed the sentence; and
 - b. the child's conduct, regardless of whether the child

²⁰ TEX. FAM. CODE §54.04(q).

²¹ TEX. FAM. CODE § 54.04(d)(1).

²² Tex. Crim. Proc. Code Art. 42.12 § 3, 4(a).

²³ See Tex. Fam. Code § 54.04 (q); compare Tex. Crim. Proc. Code Art. 42.12 § 4(b).

²⁴ TEX. HUM. RES. CODE §61.081(f).

²⁵ TEX. HUM. RES. CODE §61.084(g).

²⁶ TEX. HUM. RES. CODE §61.079(a)(2).

was released under supervision under Section 61.081, indicates that the welfare of the community requires the transfer.²⁷

This provision allows TYC to request transfer to adult prison those youth who are not working the programs or progressing satisfactorily towards rehabilitation. Once a youth turns sixteen years old and has been at TYC for at least six months transfer can be requested.²⁸

The decision regarding transfer to prison will be made by the committing court without a jury.²⁹ In making a decision regarding transfer the court has wide discretion;³⁰ the court may consider various factors such as the child's history before and after being committed to TYC, the nature of the original offense, and the recommendation of TYC.³¹ When the purpose of the hearing is to consider transfer the court may either transfer the respondent to adult prison or return the child to TYC.³²

The procedures and guidelines to be adhered to in a transfer hearing are addressed in §54.11.

2007 Legislative Changes

During the 2007 80th Texas Legislative Session major changes were enacted which dealt with the Texas Youth Commission and juvenile justice. The legislative revisions were the result of reports of widespread physical and sexual abuse of children at TYC facilities. As a result of the new legislation a major overhaul resulted in the handling of

juveniles committed to the Texas Youth Commission. First, the age of control was reduced; now the maximum age of TYC jurisdiction is 19³³. This reduction will greatly effect determinate sentencing in that this reduces the amount of time juveniles can remain under TYC control. Secondly, no longer can juveniles with misdemeanor adjudications be committed to TYC. Jury trials were also affected. Juveniles facing a determinate sentence must now request a jury for disposition prior to voir dire or if not requested timely must have permission from the State and the Court.³⁴

Summary

Determinate sentencing was enacted in response to an increase in violent crimes being committed by juveniles. Although many offenses are eligible for determinate sentencing few cases are actually filed as determinate sentenced.³⁵ A juvenile receiving a determinate sentence has the potential of serving his or her sentence in a juvenile prison where rehabilitation and education are not the primary purpose of the adult system. A juvenile who receives a determinate sentence can never have his record sealed and even if not transferred to the Institutional Division of the Texas Department of Corrections can be under the supervision of adult parole for up to forty years. However, determinate sentence can be a very beneficial option when facing the most serious of juvenile cases—the waiver of jurisdiction and transfer to adult court.

²⁷ TEX. HUM. RES. CODE §61.079.

²⁸ TEX. HUM. RES. CODE §61.079(a)(2).

²⁹ TEX. FAM. CODE § 54.11.

³⁰ See, generally, *Matter of C.L., Jr.*, 874 S.W.2d 880 (Tex.App.—Austin 1974); *K.L.M. v. State*, 881 S.W.2d 80 (1994).

³¹ TEX. FAM. CODE §54.11(K).

³² TEX. FAM. CODE §54.11(i).

³³ See generally, TEX. HUM. RES. CODE §§61.079, 61.081, 61.084; TEX. GOV'T CODE §508.156.

³⁴ TEX. FAM. CODE § 54.04(a).

³⁵ For a detailed empirical analysis see, Dawson, Texas Blended Sentencing: An Empirical Study of the Uses of Determinate Sentencing, 17 State Bar of Texas Section Report Juvenile Law 5-17 (No. 2, June 2003).

§ 53.045 Violent or Habitual Offenders

(a) Except as provided by Subsection (e), the prosecuting attorney may refer the petition to the grand jury of the county in which the court in which the petition is filed presides if the petition alleges that the child engaged in delinquent conduct that constitutes habitual felony conduct as described by Section 51.031 or that included the violation of any of the following provisions:

- (1) Section 19.02, Penal Code (murder);
- (2) Section 19.03, Penal Code (capital murder);
- (3) Section 19.04, Penal Code (manslaughter);
- (4) Section 20.04, Penal Code (aggravated kidnapping);
- (5) Section 22.011, Penal Code (sexual assault) or Section 22.021, Penal Code (aggravated sexual assault);
- (6) Section 22.02, Penal Code (aggravated assault);
- (7) Section 29.03, Penal Code (aggravated robbery);
- (8) Section 22.04, Penal Code (injury to a child, elderly individual, or disabled individual), if the offense is punishable as a felony, other than a state jail felony;
- (9) Section 22.05(b), Penal Code (felony deadly conduct involving discharging a firearm);
- (10) Subchapter D, Chapter 481, Health and Safety Code, if the conduct constitutes a felony of the first degree or an aggravated controlled substance felony (certain offenses involving controlled

substances);

(11) Section 15.03, Penal Code (criminal solicitation);

(12) Section 21.11(a)(1), Penal Code (indecentcy with a child);

(13) Section 15.031, Penal Code (criminal solicitation of a minor);

(14) Section 15.01, Penal Code (criminal attempt), if the offense attempted was an offense under Section 19.02, Penal Code (murder), or Section 19.03, Penal Code (capital murder), or an offense listed by Section 3g(a)(1), Article 42.12, Code of Criminal Procedure;

(15) Section 28.02, Penal Code (arson), if bodily injury or death is suffered by any person by reason of the commission of the conduct;

(16) Section 49.08, Penal Code (intoxication manslaughter); or

(17) Section 15.02, Penal Code (criminal conspiracy), if the offense made the subject of the criminal conspiracy includes a violation of any of the provisions referenced in Subdivisions (1) through (16).

(b) A grand jury may approve a petition submitted to it under this section by a vote of nine members of the grand jury in the same manner that the grand jury votes on the presentment of an indictment.

(c) The grand jury has all the powers to investigate the facts and circumstances relating to a petition submitted under this section as it has to investigate other criminal activity but may not issue an indictment unless the child is transferred to a criminal court as provided by Section 54.02 of this code.

(d) If the grand jury approves of the petition, the fact of approval shall be certified to the juvenile court, and the certification shall be entered in the record of the case. For the purpose of the transfer of a child to the Texas Department of Criminal Justice as provided by Section 61.084(c), Human Resources Code, a juvenile court petition approved by a grand jury under this section is an indictment presented by the grand jury.

(e) The prosecuting attorney may not refer a petition that alleges the child engaged in conduct that violated Section 22.011(a)(2), Penal Code, or Sections 22.021(a)(1)(B) and (2)(B), Penal Code, unless the child is more than three years older than the victim of the conduct.