

Determinate Sentencing

Jill Mata

Asst. District Attorney

Juvenile Division Chief

Bexar County District Attorney's Office

Legal Authorization

- Enacted in 1987- Must be heard by Judge (no referee/masters)
- Texas Family Code
- 53.045, 54.04, 54.11

- Texas Human Resources Code
- 61.079
- 61.084

Blended Sentencing in Texas

- Blends the Juvenile System with the Adult System
- Intended to address the gap in coverage
- Augments and/ or replaces Certification and Transfer to Adult Court
- The effect of Senate Bill 103 and reduction in TYC Jurisdiction from age 21 to 19

Defining Characteristics

- Juvenile is charged in Juvenile Court with a special petition
- that has Grand Jury approval
- and upon adjudication receives a disposition that begins in Juvenile system
- With a possible transfer to adult prison or parole

Applicability of Statute

- Covers total juvenile age range 10 thru 16
- Covers only certain offenses found in statute
- Mainly aggravated offenses and habitual offenses
- Can be used when C&T is unsuccessful

Covered Offenses

- Aggravated Offenses
- Attempted 3(g) Offenses
- Criminal Conspiracy to commit enumerated offenses
- Solicitation to commit capital or 1st degree
- Drug Offenses-Agg or 1st degree
- Habitual Felony Conduct (2 previous adj)

Charging Issues

- Petition and Service requirements are the same as in indeterminate cases
- But must clearly allege at least one eligible offense
- Should state that determinate sentence is the relief sought
- Should state that petition will be presented to a grand jury for approval

Grand Jury Presentation

- No set rules for Grand Jury to follow so use an “indictment” standard
- Use a Probable Cause Standard regarding offense
- Must have at least 9 members approve decision to seek a determinate sentence
- More than one bite at the apple

Trial Issues

- Jury must consist of 12 persons
- 10 peremptory challenges 54.03(c)
- Right to Jury in Disposition Phase
- If child makes a written election for jury before start of voir dire
- Or, after adjudication, if prosecution consents to election

Special Range of Punishment

- 10 – eligible 3rd degree felonies
- 20 – eligible 2nd degree felonies
- 40 – eligible 1st degree and capital felonies
- Probation is possible by Judge or Jury if sentence imposed is 10 years or less

Probation Considerations

- Probation – begins in juvenile court with a transfer to adult probation after a hearing in front of the juvenile judge
- State must file a motion to transfer probation before 18th birthday
- No right to jury in revocation hearing
- Upon revocation Court may impose term up to original sentence length

Minimum lengths of Stay in TYC

- 1,2,3 or 10 years (HRC 61.081(f))
- Determinate Sentence Offenders must be transferred to TDCJ parole to serve balance of sentence on 19th B-day if the person has not already been discharged or transferred
- Credit for all time served

Sexual Assault Special Issues

- Cannot refer petition to GJ for Agg Sex or Sex Assault unless actor is 3 years older than victim. TFC 53.045(e)
- Usually consensual cases
- If threat or force was used to induce intercourse the DS rules apply without regard to age difference
- No need to allege age in petition

Affirmative Defense in Sexual Offenses

- In a sexual assault (consensual) if Actor shows that he falls within 3 year age span he cannot be adjudicated for DS and will be found not guilty of offense
- In an Agg Sexual Assault (consensual >14) if actor shows he falls within 3 year span he avoids DS but does not avoid a regular delinquency finding.

Release or Transfer Hearing Before January 1, 1996

- All DS offenders faced the juvenile judge just prior to their 18 birthday for a hearing
- Judge decided whether to discharge or recommit actor to TYC or transfer actor to TDCJ
- Great discrepancy between courts and jurisdictions

Release Hearing for Early Parole after January 1, 1996

- TYC has sole discretion to parole a child who has completed minimum length of stay (MLS)
- TYC is permitted to petition the committing court for authority to release a child on parole who has not yet served the MLS
- Court can approve or disapprove parole but not send the child to TDCJ

Release/Transfer Hearings after 2007

- TYC age changed from 21 to 19
- Court has jurisdiction to hold hearing for 19 year olds
- For actors who are in TYC at age 19 and no transfer hearing is sought by TYC, the actor is automatically placed on adult parole to serve balance of sentence
- No right to a jury

Release or Transfer Hearing

- 54.11 TFC
- Notice
- Hearing must be scheduled not later than the 60th day after receiving the referral
- No right to a jury
- Court can consider written reports from TYC which must be available to defense at least one day prior to the hearing

Good Luck!

- Please call if you have any questions:

Jill Mata

210 335-1965

jmata@bexar.org