

Determinate Sentencing

Ryan J. Mitchell
P.O. Box 1570
Houston, Texas 77251-1570
Phone: 832.534.2542
Fax: 832.369.2919
Email: ryanjmitchell.law@gmail.com

Outline

HISTORY
PROCEDURE
DATA

HISTORY



You have to know the past to understand
the present – Carl Sagan

Created in 1987

Determinate Sentencing Statute

Created as an alternative to lowering the age for certification eligibility

Maximum Sentence set at 30 years (reserved for Capital and first degree felonies)

Six eligible offense (Capital Murder, Murder, attempted Capital Murder, Aggravated Kidnapping, Aggravated Sexual Assault or Deadly Assault on a Law Enforcement Officer

Maximum age of jurisdiction was 21 in juvenile court system

Transferred to adult prison by age 18

Legislative Changes in 1991

Forty years for most serious offenses (Murder, Capital Murder, aggravated controlled substances felony)

1995 Legislative Changes

Eleven new offenses which brought the total to thirty (including attempt level offenses)

Eliminated transfer hearings regarding transfer before the minimum length of incarceration was reached

Minimum length of incarceration was ten years for a capital felony, three years for a first degree felon, two years for a second degree felony and one year for a third degree felony

Maximum ranges of punishment were also set at a maximum of ten years for third degree felonies, twenty years for second degree felonies, and forty years for first degree felonies and capital murder

Legislative Changes in 2001

Two new offenses were added

Latest Legislative Changes

In response to widespread abuse within the Texas Juvenile Justice Department (Formally Texas Youth Commission)

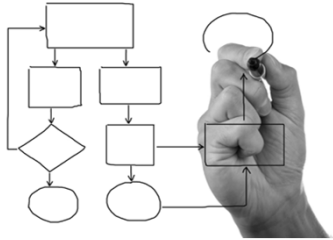
Maximum age of jurisdiction was reduced from age twenty-one to age nineteen.

If a juvenile had not successfully served the sentence imposed and had not been transferred to the adult system the juvenile was transferred to adult parole supervision on 19th birthday



Where to Find it

PROCEDURE



PROCEDURE OUTLINE

FILE THE CASE
HEARING
POST-ADJUDICATION



HOW TO FILE THE CASE

The State has essentially
unfettered discretion

Bleys v. State
In the Matter of S.B.C

Must present the case to
Grand Jury



ELIGIBILITY

Capital Murder	Aggravated Assault
Attempted Capital Murder	Aggravated Robbery
Murder	Attempted Aggravated Robbery
Attempted Murder	Felony Injury Cases
Manslaughter	Felony Deadly Conduct
Intox Manslaughter	Aggravated Control Substances Felonies
Aggravated Kidnapping	Second Degree felony indecency with a child
Attempted Aggravated Kidnapping	Criminal Solicitation
Aggravated Sexual Assault	First Degree Felony Arson
Sexual Assault	Criminal Conspiracy
Attempted Sexual Assault	
Habitual Felony Conduct	

Restriction



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

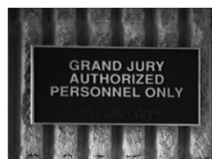
Grand Jury

At least 9 out of the 12 members must approve the petition

Approval must be sent to the juvenile court and entered into the record

State may waive determinate petition

Juvenile and attorney can waive grand jury presentment



HEARING



RULES

Must be 12 jurors on the jury
Juvenile has a right to have the jury determine sentence
Request for jury sentencing must be in writing
Written request must be filed before the start of voir dire
Juvenile court referees, associate judges, or constitutional county judges are prohibited from hearing a determinate petition

Disposition

PROBATION
TEXAS JUVENILE JUSTICE
DEPARTMENT



PROBATION

Sentence must be 10 years or less

Probation must be awarded

Judge assess the length of the probation and conditions

Begin at home or in the care of the Chief Juvenile Probation Officer

Judge shall make a finding that it is in the child's best interests to be placed outside the child's home; reasonable efforts were made to prevent or eliminate the need for the child's removal from the child's home and to make it possible for the child to return home; and the child, in the child's home, cannot be provided the quality of care and level of support and supervision that the child needs to meet the conditions of probation.



SUPERVISION and DISCHARGE

Supervised by Juvenile Probation

Jurisdiction terminates at either 18 or 19 (2011)

State may petition to transfer supervision if probation is not finished

Hearing must be requested and completed before aging out

If discharged, discharge date is entered

Juvenile released on discharge date

SUPERVISION and TRANSFER

At hearing the judge may transfer the supervision of the juvenile to an appropriate adult district court

Transfer happens on 19th Birthday (18 if before 2011)

Only the petition, the grand jury approval, the judgment concerning the conduct for which the person was placed on determinate sentence probation, and the transfer order are a part of the district clerk's public record

Minimum requirements for adults are not required for transferred juveniles

Conditions of adult court must be consistent with the juvenile court conditions

Violations are handled as adults with no minimum restrictions

TEXAS JUVENILE JUSTICE DEPARTMENT OUTLINE

RESTRICTIONS
PAROLE
TRANSFER TO ADULT
SYSTEM



RESTRICTIONS

MINIMUM STAYS

10 years – Capital Felony
3 years – First Degree Felony
2 years – Second Degree Felony
1 year – Third Degree Felony

MAXIMUM SENTENCE

40 years – Capital Felony, First Degree, Aggravated
Controlled Substances Felony
20 years – Second Degree Felony
10 years – Third Degree Felony

PAROLE

Prior to reaching age 19 the
Texas Juvenile Justice
Department may elect to
parole the juvenile

Juvenile must serve the
minimum sentence

If paroled prior to 19,
supervised by the Texas
Juvenile Justice Department

Automatically transferred to
adult parole system at 19th
birthday



TRANSFER TO ADULT PRISON

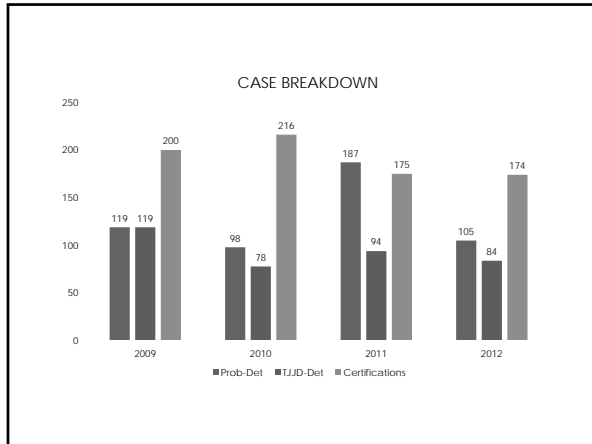
After juvenile turns 16 but before juvenile turns 19
Court of original jurisdiction
Juvenile entitled to an attorney
Attorney entitled to access to all evidence
Must be recorded and recording retained for 2 years
Notice of the time and place of the hearing must be given to the guardian, the juvenile, prosecuting attorney, victim and any other person who has filed a written request
Court may consider written reports from probation officers, professional court employees, professional consultants, or employees of the Texas Youth Commission, in addition to witnesses

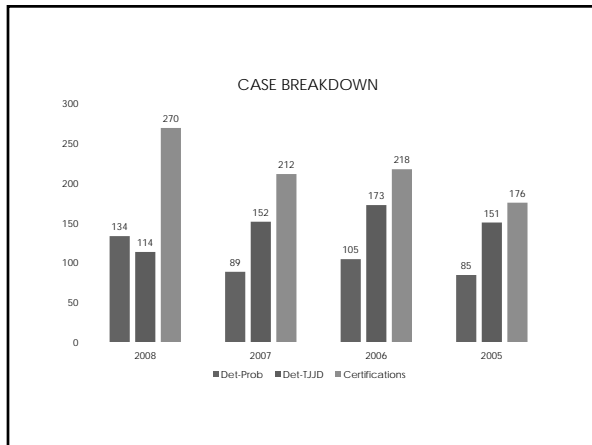
TRANSFER BURDEN

In order to satisfy the transfer of the juvenile into the adult system the commission must show that the child has not completed the sentence and the child's conduct indicates that the welfare of the community requires the transfer
Texas Human Resource Code 61.079

DATA







Thank You
Determinate Sentencing

Ryan J. Mitchell
P.O. Box 1570
Houston, Texas 77251-1570
Phone: 832.534.2542
Fax: 832.369.2919
Email: ryanjmitchell.law@gmail.com

DETERMINATE SENTENCING

29TH Annual Juvenile Law Conference
San Antonio, Texas
February 22, 2016

Ryan J. Mitchell, Attorney at Law
P.O. Box 1570
Houston, Texas 77251-1570
Phone: 832.534.2542
Fax: 832.369.2919
Email: ryanjmitchell.law@gmail.com

Contents

Introduction	1
History.....	1
Procedure under Determinate Sentencing.....	3
Grand Jury	3
Hearing.....	3
Probation	3
Texas Juvenile Justice Department.....	5
Parole	5
Transfer to Adult Prison	5
Conclusion.....	6

Introduction

Determinate sentencing is a hybrid system that allows a juvenile court to maintain control of a juvenile charged with a serious crime, while at the same time fulfilling the purpose of the Juvenile Justice Code. The purpose of the Juvenile Justice Code is to remove, where appropriate, the taint of criminality from children committing certain unlawful acts and to provide treatment, training and rehabilitation that emphasizes the responsibility of both the parent and the child for the child's conduct.¹

When the courts proceed under an Indeterminate Petition, the juvenile can only utilize the rehabilitation programs available to the Juvenile Justice System until the juvenile ages out of the system. The certification process moves the juvenile immediately into the adult system, bypassing the programs within the Juvenile Justice System structure. By contrast, Determinate sentencing is the hybrid solution that offers the Juvenile Courts an attempt to rehabilitate the Juvenile and transfer the Juvenile to the adult system only if it becomes necessary.

History

Prior to 1987, the State of Texas was given jurisdiction over a juvenile until the juvenile turned twenty-one.² A juvenile could not be certified if the child had not reached the age of 15.³ This created a void for juveniles charged with serious crimes, that could not be certified or certification was unwarranted. It

also forced the courts to certify juveniles about to age out of the system because there was no alternative. This began to conflict with the rehabilitation purpose of the Juvenile Justice Code.⁴

In response to this dilemma, Determinate Sentencing was created by the Texas Legislature in 1987 with the passing of the Texas Determinate Sentencing Act.⁵ Under the Texas Determinate Sentencing Act juveniles, between ages ten through sixteen, who had committed Capital Murder, Murder, attempted Capital Murder, Aggravated Kidnapping, Aggravated Sexual Assault or Deadly Assault on a Law Enforcement Officer were eligible for Determinate Sentencing.⁶ The maximum sentence was thirty years.⁷ The Texas Youth Commission would house the juvenile but could petition the court at any time to parole the juvenile.⁸ If the juvenile was not paroled, a mandatory hearing in the Juvenile Court was required upon the juvenile reaching seventeen and one-half years old.⁹ The court would make the decision to either transfer the juvenile to the Texas Department of Criminal Justice to be treated as an adult, or parole the juvenile from the Texas Youth Commission.¹⁰ If the juvenile was paroled from the Texas Youth Commission, the juvenile was to remain on parole until the full sentence was served, the court discharged the juvenile or the juvenile reached the age of twenty-one.¹¹

The next change enacted by the legislature happened in 1991.¹² The legislature increased the maximum sentence to forty years if the juvenile was sentenced under

¹ Tex. Fam. Code Sec. 51.01

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 Tex. Fam. Code 54.02

⁴ Tex. Fam. Code Sec. 51.01

⁵ 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).

⁶ Advances in Criminological Theory, Volume 8: The Criminology of Criminal Law edited by William S. Laufer and Freda Adler

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Lost Causes: Blended Sentencing. Second Chances, and the Texas Youth Commission by Chad R. Trulson, Darin R. Haerle, Jonathan W. Caudill, Matt DeLisi and James W. Marquart

Determinate Sentencing for committing Capital Murder, Murder or an aggravated controlled substances felony.¹³

Four years later in 1995 the legislature acted again. The legislature added eleven new offenses which (including attempting to commit the crime) brought the total of criminal offenses eligible for determinate sentencing to thirty.¹⁴ In addition to adding to the list of eligible offenses, the legislature also eliminated transfer hearings unless the Texas Youth Commission requested the transfer of a youth to the Texas Department of Criminal Justice or the Texas Youth Commission wanted to parole a juvenile before the minimum length of incarceration was reached. The minimum length of incarceration was ten years for a capital felony, three years for a first degree felony, two years for a second degree felony and one year for a third degree felony.¹⁵ Maximum ranges of punishment were also set at a maximum of ten years for third degree felonies, maximum punishment of twenty years for second degree felonies, and a maximum punishment of forty years for first degree felonies and capital murder.¹⁶

In 2001 two new offenses were added to bring the total list of offenses to include:

- Murder
- Attempted Murder
- Capital Murder
- Attempted Capital Murder
- Manslaughter
- Intoxication Manslaughter
- Aggravated Kidnapping
- Attempted Aggravated Kidnapping
- Aggravated Sexual Assault
- Sexual Assault
- Attempted Sexual Assault
- Aggravated Assault
- Aggravated Robbery
- Attempted Aggravated Robbery

- Felony Injury (Child, Elderly, or Disabled)
- Felony Deadly Conduct
- Aggravated First-Degree Controlled Substance Felony
- Criminal Solicitation of a Capital or First Degree Felony
- Second Degree Felony Indecency with a Child
- Attempted Indecency with a Child by Contact
- Criminal Solicitation of a Minor
 - To commit Indecency with a Child
 - To commit Sexual Assault
 - To commit Aggravated Sexual Assault
 - To commit Sexual Performance by a Child
- First Degree Arson
- Habitual Felony Conduct (3 consecutive Felonies)
- First Degree Arson
- Felony Deadly Assault – Discharge of a Firearm; and
- Aggravated Controlled Substance Felony¹⁷

Another change with regards to determinate sentencing came in 2007. The legislature changed the maximum age of jurisdiction from age twenty-one to age nineteen. The legislature also provided that if a juvenile had not successfully served the sentence imposed and had not been transferred to the adult system, the juvenile was transferred to adult parole supervision upon reaching the age on nineteen.¹⁸

¹³ Id.

¹⁴ Id.

¹⁵ www.tjcd.texas.gov/about/sentenced_offenders

¹⁶ Tex. Fam. Code 54.04

¹⁷ Lost Causes: Blended Sentencing. Second Chances, and the Texas Youth Commission by Chad R. Trulson, Darin R. Haerle, Jonathan W. Caudill, Matt DeLisi and James W. Marquart

¹⁸ Id.

Procedure under Determinate Sentencing

In certification hearings, after the prosecutor selects to file the Certification Petition, discretion is left to the Juvenile Judge to determine if certification is warranted. This is accomplished by presenting evidence at a hearing.¹⁹ Determinate sentencing places a vast majority of the discretion in the hands of the prosecutor at the initial stages of the procedure.²⁰ The judge and state organizations are not granted discretion until post-adjudication.²¹

Grand Jury

If the prosecution elects to proceed under the Determinate Sentencing statute, the case must be presented to the grand jury.²² At least nine members of the grand jury must approve the Determinate Petition.²³ This is the only check and balance against total prosecutorial discretion.

If at least nine members approve the Determinate Petition, the approval of the petition shall be certified to the juvenile court and the approval shall be entered in the record of the case.²⁴ The certification of the approval by the grand jury gives the juvenile court the jurisdiction to proceed under the Determinate Sentencing statute. However, the respondent and the attorney do have the right to waive grand jury approval.

If nine members fail to approve the determinate petition, the state cannot proceed under the determinate sentencing statute.²⁵ The state may proceed with an indeterminate petition or certify the juvenile if appropriate.

Hearing

As with all juvenile cases, the hearing consists of an adjudication hearing (determining if it is true or not true that the juvenile engaged in delinquent conduct and is in need of rehabilitation or supervision) and a disposition hearing (determining the sentence).

Any judge granted jurisdiction over juvenile cases may preside over an indeterminate petition. The amount of jurors hearing the evidence under an indeterminate petition is dependent on if the County Court or District Court is granted jurisdiction over the juvenile cases. The juvenile has no right to have a jury handle the disposition hearing under an indeterminate petition.²⁶

These rules change if the state is proceeding under a properly approved Determinate Petition. First, the amount of jurors hearing the case must be twelve regardless of what court has jurisdiction.²⁷ Second, the juvenile has a right to have the jury determine the sentence.²⁸ The attorney for the juvenile must file a written request in order to elect the jury to determine sentencing.²⁹ The written request must be filed before the start of voir dire.³⁰ Third, there is a restriction on what type of judge may preside over the determinate case. Only the elected official may preside over the hearings.³¹ Juvenile court referees, associate judges, or constitutional county judges are prohibited from hearing a determinate petition.³² Other than these key differences, the indeterminate petition proceedings and determinate petition proceedings, remain virtually the same.

Probation

After the juvenile is found to have engaged in delinquent conduct and is in need of

¹⁹ Tex. Fam. Code 54.02

²⁰ Tex. Fam. Code 53.045

²¹ Tex. Hum. Res. Code 61.079; Tex. Hum. Res. Code 61.084

²² Tex. Fam. Code 53.045; Tex. Fam. Code 54.04

²³ Tex. Fam. Code 53.045

²⁴ Id.

²⁵ Id.

²⁶ Id.

²⁷ Tex. Fam. Code 54.03

²⁸ Tex. Fam. Code 54.04

²⁹ Id.

³⁰ Id.

³¹ Tex. Fam. Code 54.10; Tex. Fam. Code 51.04

³² Id.

rehabilitation or supervision the juvenile is sentenced. The juvenile may either be sentenced to a term of years in the Texas Juvenile Justice Department or may be placed on probation.

During the disposition hearing, the judge or jury may elect to place the juvenile on probation.³³ First, the juvenile must be sentenced to ten years or less.³⁴ Second, the judge or jury must award probation to the juvenile.³⁵ If the juvenile is placed on probation by the judge or jury, the juvenile can begin probation either at home or in the care of the Chief Juvenile Probation Officer.³⁶ If the judge places the juvenile outside of the home, the judge shall make a finding that it is in the child's best interests to be placed outside the child's home; reasonable efforts were made to prevent or eliminate the need for the child's removal from the child's home and to make it possible for the child to return home; and the child, in the child's home, cannot be provided the quality of care and level of support and supervision that the child needs to meet the conditions of probation.³⁷

Just as with adult cases, if the juvenile is placed on probation the terms and conditions of probation are assessed by the judge.³⁸ The judge assess the length of the probation and what services the juvenile will be ordered to attend.³⁹

Juvenile probation will begin the supervision of a juvenile that is awarded probation. Currently, juvenile probation has jurisdiction over to the juvenile until the juvenile's nineteenth birthday.⁴⁰ If the offense was committed prior the September 1, 2011, juvenile probation has jurisdiction over the

juvenile until the juvenile's eighteenth birthday.⁴¹

Prior to the juvenile reaching age nineteen, if the juvenile has not completed probation, the state may petition the court to transfer the juvenile's supervision to an adult district court. The juvenile will be discharged from probation if the request is not made and the hearing is not completed before the juvenile's nineteenth birthday.

If the court determines to discharge the juvenile from probation, the court enters the discharge date into the record.⁴² The discharge date must be on or before the juvenile's nineteenth birthday.⁴³ Once this date occurs, the juvenile is discharged from probation.⁴⁴

The judge may also elect to transfer the supervision of the juvenile to an appropriate adult district court. If this occurs, the juvenile is transferred to adult supervision on the juvenile's nineteenth birthday. Upon transfer to an adult court only the petition, the grand jury approval, the judgment concerning the conduct for which the person was placed on determinate sentence probation, and the transfer order are a part of the district clerk's public record.⁴⁵ The minimum requirements for adults are not required for juveniles that are transferred into the adult court.⁴⁶ Also the adult court may only order conditions of probations that are consistent with the juvenile court conditions.⁴⁷

If a juvenile violates the conditions of probation after transfer to an adult court, the district court shall dispose of the violation in the same manner as if the court had originally exercised jurisdiction over the case.⁴⁸ However, the judge is not bound by the minimum requirements set out for adults.⁴⁹

³³ Tex. Fam. Code 54.04

³⁴ Id.

³⁵ Id.

³⁶ Id.

³⁷ Tex. Fam. Code 54.05(m)

³⁸ Id.

³⁹ Id.

⁴⁰ Tex. Fam. Code 54.051

⁴¹ Id.

⁴² Tex. Fam. Code 54.051(c)

⁴³ Id.

⁴⁴ Id.

⁴⁵ Tex. Fam. Code 54.051(d-1)

⁴⁶ Tex. Fam. Code 54.051(e-1)

⁴⁷ Tex. Fam. Code 54.051(e-2)

⁴⁸

⁴⁹ Tex. Fam. Code 54.051(e-2)

Texas Juvenile Justice Department

If the judge or the jury do not award probation, the juvenile is transferred to the Texas Juvenile Justice Department for a certain number of years. As discussed earlier in this paper, the minimum stay for a Capital Murder is ten years.⁵⁰ The minimum stay for first degree felonies is three years.⁵¹ The minimum stay for second degree felonies is two years.⁵² For third degree felonies the minimum stay is one year.⁵³

As discussed earlier in this paper maximum sentences also apply. The maximum penalty for a capital degree felony, felony in the first degree, or an aggravated controlled substance felony is not more than forty years.⁵⁴ For a second degree felony the maximum punishment is not more than twenty years.⁵⁵ For a third degree felony the maximum penalty is not more than ten years.⁵⁶

Parole

Prior to the juvenile reaching the age of nineteen, the Texas Juvenile Justice Department may elect to parole the juvenile. The only restriction is that the juvenile cannot be paroled until the juvenile has served the minimum sentence with respect to the adjudicated offense.⁵⁷ If the juvenile is paroled prior to reaching the age of nineteen, the Texas Juvenile Justice Department will supervise the juvenile.⁵⁸ Upon reaching the age of nineteen the juvenile will be automatically transferred to adult parole system to serve the rest of the sentence.⁵⁹

Transfer to Adult Prison

If the juvenile is not discharged or paroled, the juvenile may be transferred to the adult prison system. When the juvenile becomes sixteen years of age but before the

child becomes nineteen 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 Texas Department of Criminal Justice for confinement.⁶⁰ In order to satisfy the transfer of the juvenile into the adult system the commission must show that the child has not completed the sentence and the child's conduct indicates that the welfare of the community requires the transfer.⁶¹

Before the transfer hearing takes place proper notice of the time and place of the hearing must be given to the person to be transferred or released under supervision, the parents of the person, any legal custodian of the person, including the Texas Youth Commission, the office of the prosecuting attorney that represented the state in the juvenile delinquency proceedings, the victim of the offense that was included in the delinquent conduct that was a ground for the disposition, or a member of the victim's family, and any other person who has filed a written request with the court to be notified of a release hearing with respect to the person to be transferred or released under supervision.⁶² The hearing is not invalid if it is shown on the record that a person requiring notice is unable to be located and reasonable efforts were used to attempt to locate the party.⁶³

At the transfer hearing the court may consider written reports from probation officers, professional court employees, professional consultants, or employees of the Texas Youth Commission, in addition to the testimony of witnesses.⁶⁴ The court shall provide the attorney for juvenile with access to

⁵⁰ Tex. Hum. Res. Code 61.081

⁵¹ Id.

⁵² Id.

⁵³ Id.

⁵⁴ Tex. Fam. Code 54.04(d)(3)(a)

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Tex. Hum. Res. Code 61.081

⁵⁸ Tex. Hum. Res. Code 61.084

⁵⁹ Id.

⁶⁰ Tex. Hum. Res. Code 61.079

⁶¹ Id.

⁶² Tex. Fam. Code 54.11

⁶³ Id.

⁶⁴

all written matter to be considered by the court.⁶⁵

At the hearing, the juvenile is entitled to an attorney.⁶⁶ The hearing must be recorded by a court reporter or by audio or video tape recording, and the record of the hearing must be retained by the court for at least two years after the date of the final determination on the transfer or release of the juvenile.⁶⁷ At the hearing the court may consider the experiences and character of the juvenile before and after commitment to the youth commission, the nature of the penal offense that the juvenile was found to have committed, the manner in which the offense was committed, the abilities of the juvenile to contribute to society, the protection of the victim of the offense or any member of the victim's family, the recommendations of the youth commission and prosecuting attorney, the best interests of the juvenile, and any other factor relevant to the issue to be decided.⁶⁸

Conclusion

Determinate sentencing was created in 1987 to address the void between indeterminate sentencing and certification proceedings. The main purpose was to maintain jurisdiction over juveniles convicted of serious cases without transferring the juvenile immediately to the adult system. This allowed the Texas Juvenile Justice Department the opportunity to allow the juvenile access to rehabilitation programs that are not available to adult offenders.

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ Id.