

Options for Serious Offenders: Certification and Determinate Sentencing

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Comparison- Age Limits

Determinate Sentence

- All ages
- Considerations of age should still be a factor
- Considerations regarding law of parties and comparative culpability

Certification and Transfer

- 14+ for 1st Degree Felonies
15+ for all other Felonies
- National and state trends toward raising the age of juvenile jurisdiction
- Implications of possible "raise the age"

Comparison-Offenses

Determinate Sentence

- Only Some Felony offenses
- Capital Murder, Murder and Aggravated Felonies including Habitual Felony Conduct.

Certification and Transfer

- All Felony Offenses
- But limited by the age of actor when conduct occurred
- Unless for cold case murders which law allows someone who committed offense at age 10 to be certified and transferred.

Comparison-Petition

Determinate Sentence

- Grand Jury must approve the prosecutors decision to seek a determinate sentence.
- Minimal Judicial Discretion involved in the prosecutors decision to seek a determinate sentence.

Certification and Transfer

- Grand Jury used to seek an indictment only if and when child is transferred to adult court.
- Complete Judicial Discretion in deciding if child shall be certified to adult court.

Comparison-Trial

Determinate Sentence

- Jury of 12
- Bifurcated trial with option of Jury Punishment
- Limited Punishment Range
- 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

Certification and Transfer

- Jury of 12
- Bifurcated trial with option of Jury Punishment
- Adult Punishment Range
- with the exception of capital murder
- Cap Murder is now 30 year minimum before parole eligibility
- Probation is possible by Judge or Jury if sentence imposed is 10 years of less

Comparison-Sentencing

Determinate Sentence

- Sentence begins in Juvenile
- 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

Certification and Transfer

- Sentence begins in Criminal
- Same parole eligibility as an adult offender (except for capital case)

Factors to Consider

- Is there enough time to utilize Determinate Sentence?
- Will your judge likely grant a Certification?
- What is your community standard?
- Which procedure will result in the most rehabilitation or supervision?

Hot Topics to Consider

- Raise the age proposals this session
- Possible limits placed on determinate eligible offenses
- Certification under scrutiny by appellate courts
- Possibility of indeterminate for certain serious cases

Help is out there!

- TJJJ helpdesk :
helpdesk@tjjd.texas.gov
(512) 490-7116
- For Prosecutors:
Texas Juvenile Prosecutor Network
TJPN@bexar.org

Thanks!
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