

Fitness to Proceed And Lack of Responsibility In The Juvenile Justice System

Caveats:

- The fitness and lack of responsibility procedures for mental illness and intellectual disability are similar, however they have slight differences and are governed by different sections of chapter 55 of the Family Code
- If you practice both criminal and juvenile law, be sure to review chapter 55-- there are some significant differences in adult and juvenile procedures

Authority

- 2 Sources
 - ◆ Texas Family Code Chapter 55
 - Section A Definitions/General Issues
 - Section B Child with Mental Illness
 - Section C Child unfit to proceed because of MH/MR
 - Section D Lack of Responsibility because of MH/MR
 - ◆ Texas Health and Safety Code Title 7
 - Subtitles C and D

Child Mentally Ill

- If you are faced with a child who is severely mentally ill, there is an option to stay proceedings
- Child must:
 - ◆ Have Mental Illness
 - ◆ Meet Commitment Criteria
 - Danger to Self or others
 - Unable to make informed decision to commit to treatment
 - Will deteriorate if not treated in-patient

Fitness to Proceed

- (Competency to Stand Trial)

What Are The Issues?

- Mental Illness
- intellectual disability
- Other Reasons?

Mental Illness

- An illness, disease, or condition, other than epilepsy, senility, alcoholism, or mental deficiency, that: (a) substantially impairs a person's thought, perception of reality, emotional process, or judgment; or (b) grossly impairs behavior as demonstrated by recent disturbed behavior. Tex. Health & Safety Code § 571.003(14) (West).

Intellectual Disability

- Significantly sub-average general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period. Tex. Health & Safety Code § 591.003(7) (West).

**Unfit to Proceed
(Incompetence To Stand Trial)**

- A child in juvenile court who, as a result of mental illness or intellectual disability, lacks capacity to understand the proceedings in a juvenile court or to assist in the child's own defense is unfit to proceed and shall not be subjected to discretionary transfer to criminal court, adjudication, disposition, or modification of disposition as long as such capacity endures. Tex. Fam. Code § 55.31(a).

Raising The Issue of Mental Illness/intellectual disability

- The Court is required to determine whether there is probable cause to believe a child has a mental illness on the motion of any party
 - ◆ In making its determination the Court may consider:
 - the motion raising the issue, any supporting documents, "professional statements" of counsel, and witness testimony
 - the Court may also make its own observations of the child.

Probable Cause Determination

- The Court finds that there is no probable cause:
 - ◆ Case continues as usual
- The Court finds that there is probable cause, the Court shall:
 - ◆ Proceedings in the juvenile case are stayed
 - ◆ Order the child examined under §51.20
 - Report from the examination must include
 - Expert opinion on whether the child
 - Has a mental illness
 - Meets commitment criteria
 - And, if ordered, whether child is unfit to proceed

After The Examination

- After reviewing all information, including info from examination, the Court determines
 - ◆ If there is evidence the Child has a mental illness/intellectual disability and meets commitment criteria
 - ◆ If there is no evidence of a mental illness/intellectual disability, or child does not meet commitment criteria, the stay is dissolved

Commitment Proceedings

- Court may either
 - ◆ Initiate proceedings
 - ◆ Refer the case to an "appropriate" court

Case Referred to "Appropriate" Court

- Juvenile Court is required to:
 - ◆ Forwards papers regarding child's mental illness to clerk of the court receiving the case with copies to County Attorney or District Attorney
 - ◆ These papers constitute an application for mental health services under the Health and Safety Code
 - ◆ If the child is detained, release the child, order the child transferred to an appropriate place, or find that there is no appropriate place to place the child

Juvenile Committed By Court To Which Case Is Referred

- Court receiving case must notify juvenile court if child is committed
- Juvenile proceedings are automatically stayed once notice of commitment is received
- If child is not committed, juvenile court must be notified immediately in writing, and juvenile court dissolves stay

Commitment in Juvenile Court

- Prosecutor or attorney for child may file application for court-ordered mental health services
- The burden of proof is on the party who filed the application for services
- The Court appoints “the number of physicians necessary” to evaluate the child and complete certificates of medical examination for mental illness

Commitment in Juvenile Court -- Hearing

- After hearing the evidence at a hearing:
 - ◆ Order temporary mental health services if the requirements of Health and Safety Code §574.034 are met
 - ◆ Order extended mental health services if the requirements of Health and Safety Code §574.0345 are met

Commitment under Chapter 55 § C

- If child is found unfit to proceed because of a mental illness/intellectual disability, there is a 90 day placement:
 - ◆ Texas Department of State Health Services (DSHS) for MH cases
 - ◆ Texas Department of Aging and Disability (DADS) for ID cases
 - ◆ In a private psychiatric facility on petition of child's parent/guardian/guardian ad litem, with written approval of facility administrator
 - ◆ If for mental illness and Court may order treatment in an alternative setting.

Transportation To and From Facility

- Juvenile Court orders either
 - ◆ Juvenile Probation Department
 - ◆ Sheriff
- To transport child to and from treatment facility
- If JPD or Sheriff does not transport child back to court before 11th day after court signs order to return child to court:
 - ◆ Facility required to transport
 - ◆ County required to reimburse facility's transportation expenses

Information Provided To Treatment Facility

- Following commitment, Juvenile Court is required to order probation department to send copies of **any information** in the department's possession relevant to child's mental illness/intellectual disability to treatment provider

Report From Treatment Provider

- By 75th day after placement order is issued, treatment providers must submit a report to the court which
 - ◆ describes the treatment provided
 - ◆ includes opinion of facility director regarding child's fitness to proceed
- The Court forwards the report to prosecutor and child's attorney

Report From Treatment Provider-- Fit To Proceed (Mental Illness)

- If report states that child is fit to proceed
 - ◆ Juvenile court required to find child fit to proceed
 - Unless child's attorneys files objection by 2nd day after receiving copy of the report
 - ◆ If objection filed
 - Court hold fitness hearing
 - Child's attorney may request jury trial
 - ◆ If child ultimately found fit to proceed stay dissolved
 - ◆ If child found unfit to proceed commitment proceedings under §55.38 instituted

Report from Treatment Provider Potential Red Flags

- "He appears to be at least marginally fit to proceed at this time:
- Client's cognitive functioning appears to fall within the Borderline range, but his adaptive behavioral functioning, estimated to within the moderately to severely impaired ranged, is noticeably below expectation, compared to his level of cognitive functioning.

Report from Treatment Provider Potential Red Flags

- Client was partially oriented to time. (knew year, season, and day of the week, did not know month or day)
- Client did not know the name of home where he was living (at State Hospital)
- In the Communication domain, Client was rated to be functioning within the severely impaired range

Report from Treatment Provider Potential Red Flags

- Does the "language" attributed to client match your observations
- If Client is stable and cooperative, and with the cautions noted above, Client appears at least marginally capable of proceeding to trial at this time.

Report From Treatment Provider-- Unfit To Proceed (Mental Illness)

- If the report indicates child is unfit to proceed, and meets commitment criteria it must include
 - ◆ 2 certificates of mental examination for mental illness
- The Court initiates commitment proceedings or refers case to "appropriate" court

Commitment Procedures

- These parallel those in §55.13 and §55.14 of the Family Code
 - ◆ Note: §55.38 does not list which party has the burden of proof
 - ◆ Note: §55.38 required the prosecutor to file the application for services

Report From Treatment Provider -- Unfit To Proceed (intellectual disability)

- If the report states that the child meets commitment criteria and is unfit to proceed because of intellectual disability it must
 - ◆ Include an affidavit stating the conclusions reached from the diagnosis
- Juvenile Court is required to set a hearing or refer the case to an "appropriate court"

Commitment Proceedings (intellectual disability)

- Juvenile Court
 - ◆ Sets hearing and provides notice per § 593.047 and 593.048 Health and Safety Code
 - ◆ Holds hearing pursuant to § 593-049-593.046 Health and Safety Code
 - ◆ Orders commitment if § 593.052 Health and Safety Code is met
- Texas Department of Mental Health and intellectual disability is required to admit child to a residential facility on receipt of Court's order

Restoration Of Fitness

- Prosecutor may request restoration hearing if the child
 - ◆ was previously found unfit because of Mental Illness/intellectual disability
 - ◆ child is not ordered to receive inpatient, residential, or outpatient services
 - ◆ child was discharged or furloughed from treatment before reaching age 18

Restoration of Fitness

- Restoration hearing to the judge
- Fitness proven by preponderance of the evidence
- At end of hearing either:
 - ◆ Fitness restored
 - ◆ Motion to restore dismissed

After Commitment

- Title 7 Health and Safety Code governs except:
 - ◆ Court order for mental health services expires 120th day before child's 18th birthday
 - ◆ Court must be notified by facility administrator in writing (certified mail) at least 10 days before child is released

Standard Of Care Notice of Release/Furlough

- The standard of care is the same listed in §55.15. There is additional language imposing similar notification requirements on the administrator of a residential care facility

Release From Mental Health Facility

- If a child is discharged before turning 18
 - ◆ The juvenile case can be dismissed with prejudice
 - ◆ The case can proceed as though no order for MH services was entered

Child Turns 18

- If child:
 - ◆ Has not been discharged from treatment before age 18
 - ◆ Is charged with a determinate sentencing offense
- Case is referred to criminal court for competency proceedings
- Maximum sentence is limited to punishment range if prosecuted while still in juvenile court

Lack of Responsibility (Insanity)

Definition

- A child is not responsible for delinquent conduct or conduct indicating a need for supervision if, at the time of the conduct, because of mental illness or intellectual disability, the child lacks substantial capacity to appreciate the wrongfulness of the child's conduct or to conform that conduct to the requirements of the law.

The Process

- Either party may file a motion raising the issue
- When the issue is raised the court is required to order an examination under §51.20
 - ◆ Exam must include expert opinion on whether the child is not responsible because of mental illness/intellectual disability

- Insanity issue is determined by either court or jury at adjudication phase of the case
- Burden of proof is a preponderance of the evidence
- Special issue on lack of responsibility must be included in court/jury's findings
- §55.52 governs proceedings if child found not responsible

If Found Not To Be Responsible

- If because of mental illness or intellectual disability
 - ◆ if child meets commitment criteria, child is placed with
 - DADS or DSHS for period not to exceed 90 days
 - Parent/Guardian/Guardian *ad litem* may request private psychiatric facility
- If because of mental illness and Court finds child can be treated in alternative setting
 - ◆ treatment in that setting may be ordered not to exceed 90 days.

Transportation To and From Treatment Facility

- The procedure is the same listed in §55.34

Report from treatment facility

- The procedure is the same listed in §55.35

Report Child Does Not Have Mental Illness or intellectual disability

- Note this procedure is reversed from competency cases
- Prosecutor must file an objection within 2 days of receiving report, or child is discharged
- If objection filed,
 - ◆ Court holds a hearing
 - Child committed if found to have mental illness/intellectual disability
 - Discharged if no finding

Commitment Procedures

- There are separate procedures for mental illness and intellectual disability
 - ◆ The “insanity” procedures track their “competency” counterparts
 - ◆ Juvenile court may refer case to “appropriate” court for commitment proceedings

Juvenile Recommitted After 90 Day Initial Evaluation

- No deadlines
- Usually no status hearings
- May no longer be pending in the Juvenile Court (Transfer to Probate Court)

Chapter 55 Issues Checklist

Is there a Chapter 55 Issue?

(AKA Can you talk to the client and does he/she understand what is going on?)

Part I -- (Short screening test)

Can you have a coherent conversation with your client? Yes / No

Does the Client understand the charges? Yes / No

Does the Client understand the role of the prosecutor? Yes / No

Does the Client understand the role of the judge? Yes/ No

Does the Client understand your role (Defense Attorney)?

If the answer to any of the above is "No", you may need to go through the full screening questions.

Part II -- (Full screening)

Is there a history of mental health/mental retardation issues?

If so, is it a mental health history, mental retardation history or both.

What if any treatment(s) has the client received?

(i.e. who were the treating physicians, social workers, threapists, etc; what medications have been prescribed, has the client been hospitalized for treatment or sent to a residential treatment center (RTC))

School questions:

Has the client had an ARDs (Admission, Review, and Dismissal hearings)

Is he/she in special ed classes, if so which subjects.

Be sure to get all of the client's school records-- this will probably require 2 or 3

subpoenas, one for academic records including achievement tests, one for counseling records, and a third for disciplinary records.

Questions for parents:

How well does the client understand concepts/assignments

If the answer is that he/she gets it, you just have to tell him or her 3-4 times, this may indicate an issue of fitness to proceed

If there a history of inhalant abuse?

Is there anything of concern in client's developmental history, any accidents with head trauma, any illnesses with high fever, loss of consciousness, etc.

Talking to client, be sure to test not only how client responds to individual questions and legal concepts, but also client's short term memory.