

# Determinate Sentences: What Lurks Beneath



# Determinate Sentences:

- Created in 1987 by Texas Legislature for serious, violent offenses
- Between traditional indeterminate juvenile sentences and certification to stand trial as an adult
- List of eligible offenses in Texas Family Code §53.045 generally:
  - ◆ “3g”
  - ◆ some 1<sup>st</sup> degree
  - ◆ aggravated drug felonies
  - ◆ “Habitualized” cases
  - ◆ Note Robbery is not eligible

# Determinate Sentences:

- Grand Jury Approval of Petition Required
  - ◆ This is not an indictment, only an “approval”
  - ◆ If 9 members of grand jury do not vote to approve petition is rejected
    - ☞ Proceeds as normal juvenile case, or
    - ☞ Can be represented to another grand jury, or
    - ☞ If age requirements are, State can seek certification
  - ◆ Grand Jury Approval can be waived by juvenile and attorney under §51.09
  - ◆ Personal service of petition on juvenile and parents still required.

# Determinate Sentences:

- Must be heard by:
  - ◆ District Court
  - ◆ Criminal District Court
  - ◆ Family District Court, or
  - ◆ County court-at-lawWhich has been designated as a juvenile court
- May not be heard by a:
  - ◆ Constitutional county court
  - ◆ Referee/Master

# Punishment Ranges

- Third degree felonies
  - ◆ Up to 10 years to serve
- Second degree felonies
  - ◆ Up to 20 years to serve
- Capital Felonies
- First degree felonies
- Aggravated controlled substance felonies
  - ◆ Up to 40 years to serve

# Punishment

- If sentence is 10 years or less, jury may recommend probation, however judge sets length of probation and conditions

Jury?....

# Punishment

- Right to jury for sentencing
  - ◆ Must file election before start of trial
  - ◆ Adult punishment consideration come into play
    - ☞ Texas Code of Criminal Procedure Article 37.07
    - ☞ Extraneous Offense Jury Instructions
    - ☞ Voir Dire
      - Range of punishment
    - ☞ Special issues required for any juvenile disposition

# Practical Application

How does this really work?



# Practical Application

- Start in Juvenile
- Probation
  - ◆ Like any other juvenile
    - ☞ Court can terminate probation
  - ◆ Exceptions
    - ☞ Transfer hearings
    - ☞ Motion to modify
      - If sentenced to TJJD

# Practical Application

- TJJD Commitment
  - ◆ Right to time credit for all detention on this case
  - ◆ Minimum Length of Stay (MLS)

# Transfer Hearings

- Must be held before 19<sup>th</sup> birthday
  - ◆ If not transferred before age 19, then Court must discharge child on 19<sup>th</sup> birthday
- Must be held on motion of the State
- No probation violation is needed for a transfer

# Transfer Hearings

- Court's options at transfer hearing
  - ◆ Set date on or before child's 19<sup>th</sup> birthday for discharge
  - ◆ Order child's transfer to district court on 19<sup>th</sup> birthday

# Transferred Probation

- Receiving district Court
  - ◆ Continues child on probation
  - ◆ Code of Criminal Probation limitations on probation
    - ☞ Case types
    - ☞ Minimum period of community supervision

Do not apply to transferred cases

# Revocation of Transferred Probation

- Judge may reduce prison sentence regardless of Code of Criminal Probation limitations on probation

# Transferred From TJJD

- Court holds transfer hearing
- May
  - ◆ Transfer child to TDCJ
  - ◆ Order child released on parole
  - ◆ Order child's release

# What else is lurking?





# It Becomes Public

- The District Clerk creates a case which includes the petition, judgment, and order transferring
- Child's charges are now potentially online

# If Not Paroled...

- Commitment to TDCJ
  - ◆ Youthful Offender Units

# Parole Eligibility

- Once transferred to adult court, child is subject to adult parole requirements
  - ◆ Generally:
    - ☞ Non-aggravated cases  $\frac{1}{4}$  of sentence with good time
    - ☞ Aggravated cases half of sentence actually served, regardless of good time
    - ☞ Be aware of special parole requirements for certain charges

# Sex Offender Registration

- If excused prior to transfer, child can't be registered
- If not excused District Court has same discretion as juvenile court.

# Parole Condition X

- Any prior sexual offense on criminal/juvenile history
  - ◆ Even if declined, dismissed, or acquitted
- Imposes conditions of sex offender parole

# Parole Condition X

- TDCJ Parole discretion
- Notice of hearing
- Hearing is before hearing officer
- No right to Appeal