

**DETERMINATE SENTENCE:
Release and Transfer Hearings**

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**Purpose of Determinate
Sentencing Statutes**

- Determinate sentencing statutes were enacted to provide an alternative to the pre-existing criminal and juvenile systems. The criminal system strives to maintain our societal structure and to protect the *safety of citizens by punishing* persons who violate certain basic rules of conduct. The primary purpose of the juvenile system is "to provide for the care, the protection, and the wholesome moral, mental, and physical *development of children....*" Tex. Fam. Code Ann. 51.01

Richard Racehorse Haynes

- *Always Do What A Real Lawyer Would Do*

Notice of Hearing

- From the court
 - Time and Place
 - Does not have to be in writing
- Failure to give notice (except child and prosecutor)
 - Does not affect validity
 - *But* record must show reasonable efforts made by the court and whereabouts unknown

Representation

- Right to an Attorney
- Appointment of GAL, if no parent
- Right to Expert – make a sufficient showing to require the appointment of a defense expert (*Ake v. Oklahoma*; Due Process Clause)
- Failure to request expert assistance can be ineffective assistance of counsel (*Strickland v. Washington* – *counsel has a duty to investigate*)

Evidence

- Written reports
- At least one day before hearing, the court, shall provide the attorney access to all written material
- TYC employees may submit written reports to the court along with probation officers, court employee, professional consultants
- Hearsay permitted

Confrontation

- *In the Matter of M.R.*, 5 S.W.3d 879 (Tex.App.—San Antonio 1999, pet. denied)
 - Verified Motion for Continuance after receiving material day before hearing, invoking client’s right to confrontation
 - Court overruled and proceeded with hearing
 - Court of Appeals held juvenile’s right to confrontation had been violated

In the Matter of M.R.

- Child argued that more time was needed to identify the persons supplying the information and to secure their presence at the hearing
- Child was quite literally denied the chance to confront his accusers.
- “It would have made no difference if child had been tried in absentia and the judge had simply read [Cucolo’s report] to himself. This situation contravenes the spirit of due process.”

TYC Procedures – Early Transfer

- At least 16 years old
- Spent at least 6 months at TYC
- Displayed chronic disruptive behavior
- Juvenile’s record is reviewed by a special committee
- Psychological evaluation to determine amenability to treatment and risk of re-offending

TYC Procedures – Early Transfer

- Juvenile is interviewed and allowed to give his perception of his progress
- Committee sends a report to 3 levels of executive administrators and upon approval by all three, a district court hearing on the early transfer motion is requested

PREPARATION

- Summary report will be 3-4 pages
- Client was at TYC for at least 6 months – file will be 100's of pages – YOU MUST READ IT
- What was the *Chronic Disruptive Behavior*?
 - How many security unit referrals?
 - What were they for?
 - How many were self referrals?
 - How many were for minor things (doodling)

PREPARATION

- Who was on the “Special Committee” and how many agreed with recommendation? Who didn't and why?
- What is your client's psychiatric or psychological history/ how many times were medications changed? How do medication changes correspond to disruptive behavior?

PREPARATION

- What does client say and what was his/her perception of progress?
- Do you need an expert, must investigate to evaluate?
- What other witnesses do you need?
