

MENTAL HEALTH ISSUES
IN JUVENILE CASES

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I. Introduction

The juvenile justice system is similar to the adult criminal system, but as always there are important differences. The juvenile practitioner must have ready access to the Texas Family Code, The Penal and Health and Safety Codes, the Code of Criminal Procedure and frequently other codes. There are outstanding resources available including the newly renamed TAC, TJJD/Texas/gov. The State Bar Juvenile Section (juvenilelaw.org) has outstanding resources and publishes the Dawson Book, now in at least eight printing. The Juvenile Section website also has papers from the annual course in February going back to 2008 available for free download. Members of the Juvenile Section of the State Bar of Texas receive quarterly mailings with every juvenile appellate case issued..

II. Basic Differences

Begin with the basic presumption in the juvenile system. The purpose of the juvenile system is to rehabilitate the youth. In most cases, they are released to their parents, detention is a last resort and there is no bond. Juvenile probation officers really want to help the clients succeed. Terminology is different, a juvenile is detained, not arrested, a petition is filed alleging delinquent conduct, he is not charged by information or indictment. It is much easier to seal a juvenile case than an adult case. He is not found guilty, he is adjudicated. A sentence is not imposed, the case is disposed.

Just as mental health issues involving competency and sanity are complex in the adult system, they are just as complex in the juvenile courts. In these cases, we have to work with the juvenile justice code in the Texas Family Code, the mental health and mental retardation aspects of the Health and Safety Code, and the Code of Criminal Procedure. Even these complexities are made more difficult because many experienced forensic mental health professionals do not have training or experience in working with juveniles.

A. Bond

Juvenile presumed to be released on bond. In order to detain, the state must prove one of four factors in the statute, normally suitable supervision or care is not being provided, or the juvenile has been found delinquent before and is likely to commit another offense if released.

B. Intake

Every juvenile facility provides intake screening, primarily for suicide prevention. In some cases you want your client to undergo this, in others, you do not. Most juveniles have never undergone a strip search or had the restraints on their freedoms they will experience in a juvenile facility. Staff are cognizant of this difference and treat juveniles completely differently than jail or prison facilities.

C. Disposition v. Sentence

In the adult criminal system a person is found guilty of committing a criminal offense, or that finding is

deferred and he is placed on supervision. The juvenile system has two different, although usually contemporaneous hearings called an adjudication and a disposition. The adjudication proceeding can be a jury trial, a bench trial or a plea. The finding is one of true or not true, that the juvenile committed delinquent conduct. If this is a plea, a pre-disposition report shall be prepared by probation and provided in advance. An advantage for the juvenile, even without a sealing of the file later, is that on job applications they can state they were never arrested, or charged with a crime, or found guilty. The problem is that juvenile records have been appearing all over the internet.

D. Deferred

Deferred is still a possibility in juvenile court. By statute, this lasts a maximum of six months and is used for minor offenses. Some counties will assess up to a year deferred. Upon completion of deferred, the juvenile is able to have the record sealed immediately.

E. Probation

Similar to adult probation, classes, conditions. The term can be until age 18. The court can also remove the child from the home and place them with a different relative or into CPS care. The court can also enjoin all contact between the juvenile and any other person contributing to the offense. Probation can be modified, extended, but time in detention is not allowed.

F. TJJD-Indeterminate

This is a commitment to TAC and can last until age 18. The juvenile works his way through the program and works his way out of the program. Offenses will have a MLOS (Minimum Length of Stay). Placement similar to TDCJ, an intake unit, then assigned to a unit. Giddings is almost completely filled with murder and serious sex offense juveniles.

G. TJJD - Determinate

A grand jury must approve a determinate sentence petition. Not every offense/age is eligible. The maximum for a first degree offense will be 40 years, which means that prior to their release, TAC will make a determination to send the juvenile to TDCJ, or release on TAC parole. They can keep the juvenile until age 19.

A determinate sentence can also be probated, especially in a case with a serious felony and a juvenile who would age out quickly.

H. Certification

Every session the legislature adds offenses or lowers the age for offense specific age certification. This is a hearing to the court, a more intensive mental health work-up is required. The levels of certification appear to be increasing because TJJD has put caps on counties for the number of juveniles placed in TAC. As an example, Smith County used to send 50+ juveniles to TAC. Last fiscal year the cap was 20, this fiscal year the cap is 10.

I. Treatment Options

Juvenile probation has a variety

of treatment options available. Juveniles can be sent to a variety of state/county operated boot camps, county or private sex offender intensive programs, drug treatment programs.

II. Mental Illness Determination

Mental illness is defined as 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 AND SAFETY CODE ANN. §571.003(14) (West 2017).

The juvenile courts have the same jurisdiction to initiate proceedings, order mental health or mental retardation services or commitment of a child under Chapter 55 or Title 7, Subtitle C and D of the Health and Safety Code. TEX. FAM. CODE ANN. §55.02 (West 2017). The same standards of care apply for juveniles as adults committed for or treated for mental health or retardation issues. TEX. FAM. CODE ANN. §55.03 (West 2017).

A. Mental Illness

Because the primary purpose of the juvenile system is to rehabilitate, the first major difference occurs with the possibility of an initial evaluation. Unlike in the adult criminal system, the evaluation can be conducted for treatment, not just competence or sanity. If the court determines that

probable cause exists to believe the child has a mental illness, a stay is ordered.

B. Mental Illness Determination, Examination

a) On a motion by a party, the juvenile court shall determine whether probable cause exists to believe that a child who is alleged by petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision has a mental illness. In making its determination, the court may:

(1) consider the motion, supporting documents, professional statements of counsel, and witness testimony; and

(2) make its own observation of the child.

(b) If the court determines that probable cause exists to believe that the child has a mental illness, the court shall temporarily stay the juvenile court proceedings and immediately order the child to be examined under Section 51.20. The information obtained from the examination must include expert opinion as to whether the child has a mental illness and whether the child meets the commitment criteria under Subtitle C, Title 7, Health and Safety Code. If ordered by the court, the information must also include expert opinion as to whether the child is unfit to

proceed with the juvenile court proceedings.

(c) After considering all relevant information, including information obtained from an examination under Section 51.20, the court shall:

(1) if the court determines that evidence exists to support a finding that the child has a mental illness and that the child meets the commitment criteria under Subtitle C, Title 7, Health and Safety Code, proceed under Section 55.12; or

(2) if the court determines that evidence does not exist to support a finding that the child has a mental illness or that the child meets the commitment criteria under Subtitle C, Title 7, Health and Safety Code, dissolve the stay and continue the juvenile court proceedings. TEX. FAM. CODE §55.11 (West 2017).

C. Initiation of Commitment Proceedings

If, after considering all relevant information, the juvenile court determines that evidence exists to support a finding that a child has a mental illness and that the child meets the commitment criteria under Subtitle C, Title 7, Health and Safety Code, the court shall:

(1) initiate proceedings as provided by Section 55.13 to order temporary or extended mental health services, as provided in Subchapter C, Chapter 574, Health and Safety Code; or

(2) refer the child's case as provided by Section 55.14 to the appropriate court for the initiation of proceedings in that court for commitment of the child under Subchapter C, Chapter 574, Health and Safety Code. TEX. FAM. CODE §55.12 (West 2017).

D. Commitment Proceedings in Juvenile Court

If, after considering all relevant information, the juvenile court determines that evidence exists to support a finding that a child has a mental illness and that the child meets the commitment criteria under Subchapter C, Title 7, Health and Safety Code, the court shall:

(1) initiate proceedings as provided by Section 55.13 to order temporary or extended mental health services, as provided in Subchapter C, Chapter 572, Health and Safety Code; or

(2) refer the child's case as provided by Section 55.14 to the appropriate court for the initiation of proceedings in that court for commitment of the child under Subchapter C, Chapter 574, Health and Safety Code.

The burden of proof at the hearing is on the party who filed the application. The juvenile court shall appoint the number of physicians necessary to examine the child and to complete the certificates of medical

examination for mental illness required under Section 574, Health and Safety Code.

After conducting a hearing on an application under this section, the juvenile court shall:

- (1) order temporary mental health services for the child; or
- (2) order extended mental health services for the child. TEX. FAM. CODE §55.13 (West 2017).

III. Fitness to Proceed

This is similar to an adult finding of incompetence. However, the definition of fitness to proceed is broader than the adult definition of competence. The juvenile definition includes both mental illness and mental retardation as aspects of either a failure to understand the proceedings or an inability to assist in a defense. TEX. FAM. CODE §55.31(a) (West 2017). Mental retardation is based almost exclusively on intelligence quotient testing, and is not available to determine competence in the adult system. It can be an aspect to a competence finding, but is not as outcome determinative in any other situation except a death penalty case.

A. Initial Determination and Examination

Either party may submit a request for a forensic evaluation. The court will make a determination based on a probable cause standard. In most cases, as long as there is evidence offered, either through a proffer, an affidavit, either sealed or not, or

testimony from family members or juvenile facility employees, the court will find probable cause and order the evaluation. The evaluation is available for either delinquent conduct or CHINS offenses. TEX. FAM. CODE ANN. §55.31(b) (West 2017).

It takes more than a motion to require the juvenile court to order the examination. *In re Q.D.*, 600 S.W.2d 392 (Tex. App. – Fort Worth 1980, no writ). There is no statutory duty on the juvenile court to obligate the court to order an examination. *In re E.M.R.*, 55 S.W.3d 712 (Tex. App. – Corpus Christi 2001, no pet.).

Once the court determines probable cause, an examination is ordered under §55.20.

The examination must include an expert opinion as to whether or not the child is unfit to proceed as a result of mental illness or mental retardation. TEX. FAM. CODE ANN. §55.31© (West 2017).

Remember, the definitions for mental illness are broader in the juvenile system. If the expert performing the evaluations works primarily with adult offenders, make sure they know the different standards in juvenile court. Once the evaluation is complete, it is the trial court's decision as to whether or not evidence supports or does not support an unfit to proceed finding. TEX. FAM. CODE ANN. §55.31(d) (West 2017).

If the court finds that the child is unfit to proceed, the court continues with a commitment under §55.32. TEX. FAM. CODE ANN. §55.31(d)(1) (West 2017). After the initial probable cause finding, all other matters in the juvenile

case are stayed pending the evaluation. TEX. FAM. CODE ANN. §55.31(a) (West 2017).

The statute specifically names discretionary transfers, adjudications, dispositions and modifications. Detention hearings are not mentioned, and are also required under the Family Code on a regular basis. Those hearings can proceed, however, counsel should probably seek appointment of an ad litem if the issue of fitness to proceed has been raised, most definitely is there is not a parent to appear at any detention hearings. Even if the child is unfit to proceed as a result of mental illness or mental retardation does not preclude any legal objection to the juvenile court proceedings which is susceptible of fair determination prior to the adjudication hearing and without the personal participation of the child. TEX. FAM. CODE ANN. §55.32(g) (West 2017).

B. Fitness to Proceed Hearing

The hearing on fitness to proceed is separate and distinct from any other hearings in the case. This can be a jury trial on this issue, if a proper jury demand is made more than ten days prior to the hearing. (a) If the juvenile court determines that evidence exists to support a finding that a child is unfit to proceed as a result of mental illness or mental retardation, the court shall set the case for a hearing on that issue. TEX. FAM. CODE ANN. §55.32© (West 2017).

The standard of proof at this hearing is a preponderance of the credible evidence. TEX. FAM. CODE ANN. §55.32(b) (West 2017). If the court or

jury finds the child is fit to proceed, the court continues with the case as though the issue had not been raised. TEX. FAM. CODE ANN. §55.32(e) (West 2017).

If the court or jury finds the juvenile is not fit to proceed as a result of either mental illness or mental retardation, the court shall stay the proceedings as long as that incapacity endures and proceed under a different section.

C. Child is Not Fit, Now What?

If the child is not fit to proceed because of mental illness or mental retardation and the qualifications are met under the Health and Safety Code, Title 7, the child will be committed to a state facility for a period of up to 90 days for evaluation in a facility designated by the state MHMR Department. TEX. FAM. CODE ANN. §55.33(a)(1)(A) (West 2017). The child can also be placed at a private psychiatric inpatient facility for a period of not more than 90 days upon request by the parent, guardian or ad litem, but advance approval from the facility administrator is required. TEX. FAM. CODE ANN. §55.33(a)(1)(B) (West 2017). The state may be ordered to pay costs associated with this placement, subject to an express appropriation if funds. TEX. FAM. CODE ANN. §55.33(b) (West 2017). The author has seen this occur in situations where CPS was the managing conservator. The third option is for the child to receive outpatient care for a period of up to 90 days. TEX. FAM. CODE ANN. §55.33(a)(2) (West 2017). This would be most likely only in a CHINS case, and probably some

misdemeanor level offenses.

After this initial 90 day treatment period, the mental health facility can either confirm that they also believe the child is not fit to proceed, or that he is fit to proceed following treatment. If the report is that he is fit to proceed, file objections to the report in writing. TEX. FAM. CODE. ANN. §55.36(a) (West 2017). Again, the respondent can select whether to use a jury for this purpose or not, again ten days prior to the hearing. TEX. FAM. CODE. ANN. §55.36(b) (West 2017). Again, the decision will be made whether or not the child is fit to proceed at that time. If fit, the stay is lifted and the case proceeds, if unfit, the court can seek commitment proceedings. TEX. FAM. CODE. ANN. §55.36(c) and (d) (West 2017).

D. Commitment based on Lack of Fitness - Mental Illness

If the MHMR facility concludes that the child is not fit to proceed, commitment proceedings are initiated and they will provide the required physician's certificates. TEX. FAM. CODE. ANN. §55.37(b) (West 2017). The court can either order temporary or extended mental health services. TEX. FAM. CODE. ANN. §55.38(b) (West 2017). This is similar to an adult finding that a defendant is currently incompetent, but likely to regain competence in the near future. The juvenile court can also refer the matter to another court for initiation of a mental health commitment. TEX. FAM. CODE. ANN. §55.39 (West 2017).

E. Commitment based on Lack of

Fitness Mental Retardation

If the facility deems the child to be unfit as a result of mental retardation, and the child meets the appropriate criteria, the court can commit the child in the same fashion as for a mental illness commitment. In other respects, the proceedings for the two different "types" of fitness are the same. The difference being that if the lack is based on mental retardation, the child shall be committed to a residential care facility designated by MHMR. TEX. FAM. CODE. ANN. §55.41 (West 2017).

F. Age 18

If the child was found unfit to proceed, and not ordered to receive inpatient care or a residential treatment or has been discharged or furloughed from an inpatient program, the State can seek a restoration hearing before the child reaches age 18. TEX. FAM. CODE. ANN. §55.43 (West 2017). If the child is still not fit to proceed at the eighteenth birthday, the case will be transferred to an adult district court. The adult court shall within ninety days of the transfer institute adult competency proceedings, including commitment under Chapter 46B of the Code of Criminal Procedure. TEX. FAM. CODE. ANN. §55.44 (West 2017).

Because the child was not certified to face charges as an adult, if the child regains competency, the punishment assessed may not exceed the maximum allowed as if the case was still in the juvenile court. TEX. FAM. CODE. ANN. §55.44(b) (West 2017).

IV. Lack of Responsibility

A child alleged by petition to have engaged in delinquent conduct or conduct indicating a need for supervision is not responsible for the conduct if at the time of the conduct, as a result of mental illness or mental retardation, the child lacks substantial capacity either to appreciate the wrongfulness of the child's conduct or to conform the child's conduct to the requirements of law. TEX. FAM. CODE ANN. §55.51(a)(West 2017).

This is closest in comparison to an adult sanity issue. Again this is broader in the juvenile code rather than the adult system. The juvenile code allows for insanity under both standards in American criminal jurisprudence, either because of mental illness or mental retardation, the child cannot appreciate the wrongfulness of the conduct or is unable to confirm his conduct to the requirements of law. In the adult criminal system, the defense is only available in the first situation.

On a motion by a party that the child may not be responsible as a result of mental illness or mental retardation, the court shall order an examination. TEX. FAM. CODE ANN. §55.51(b) (West 2017). Unlike fitness to proceed, if either party requests this evaluation, the court must order the evaluation. There is no probable cause analysis.

However, this is a defense issue and will be tried to the court or jury in the adjudication phase of the case and the burden is on the juvenile to show a lack of responsibility by clear and convincing evidence. TEX. FAM. CODE ANN. §55.51(c)(West 2017).

If the judge or jury finds a lack of responsibility, the juvenile is automatically placed for a ninety day evaluation period, including the possibility of a private psychiatric facility or out patient care. TEX. FAM. CODE ANN. §55.52(a)(West 2017). Within 75 days that facility must report back to the court with an opinion as to the child's mental illness or mental retardation. If there is no finding of either, the child is discharged, unless in cases where a determinate sentence was sought and the prosecutor objects in writing within two days. TEX. FAM. CODE ANN. §55.55(b)(West 2017).

If the facility finds either mental illness or mental retardation, the court proceeds through a commitment proceeding similar to those for fitness to proceed. TEX. FAM. CODE ANN. §55.56-61 (West 2017).

V. RECENT ISSUES AND QUESTIONS TO PONDER

A. Competence for New Trial

Two courts have held that competence cannot be raised in a motion for new trial if it is brought to the court's attention for the first time after sentencing. *Rodriguez v. State*, 329 S.W.3d 74, 78 (Tex. App. – Houston [14th Dist.] 2010, no pet). See also *Lindsey v. State*, 310 S.W.3d 186, 188-189 (Tex. App. – Amarillo 2010, no pet.). The Beaumont Court has held that new evidence on incompetency can be considered for the first time in a motion for new trial. *Lasiter v. State*, 283 S.W.3d 909, 926 (Tex. App. – Beaumont 2009 pet. ref'd). This split issue has not

been resolved by the Court of Criminal Appeals, and has not yet been discussed in a juvenile context.

B. IQ is a range

On May 27, 2014, the Supreme Court held that the Florida rule requiring a defendant to have an IQ of 70 or below before presenting evidence of intellectual disability violated his Eighth Amendment rights in a death penalty case. Florida considered the IQ score as final and conclusive evidence of intellectual capacity and failed to recognize the score is imprecise. *Hall v. Florida*, 188 L. Ed. 2d 1007 (2014). The Court recognized that IQ scores should not be read as a single fixed number but as a range, tests have standard errors of measurement which should be considered, and if the defendant's score falls within the test's own acknowledged and inherent margin of error, the defendant should be able to present additional evidence. The defendant here had nine IQ tests over forty years with scores ranging from 60 to 80 points.

IQ tests can result in varied ranges at both ends of the spectrum of high and low scores, and facilities or courts that look at the number alone without examining deficits in intellectual and adaptive functioning will be an issue under an *Atkins* analysis. While this is a death penalty case, the analysis can be used in a competency or treatment situation. At least one state school has refused to admit a juvenile to their facility because his IQ was 57, and they require an IQ below 55 for admission. That decision of the state school was prior to the Hall

opinion.

C. Michael Morton Act

In broad strokes, the Michael Morton Act requires Texas prosecutors to turn over all evidence in the case including Brady, exculpatory, mitigating and impeachment evidence. While an in-depth discussion of that act is beyond this paper, there are interesting implications. Law enforcement officers frequently come into contact with individuals suffering from a variety of mental health issues. Many times, these individuals are civilly committed to a state hospital after they are examined by physicians following an initial hold placed by law enforcement. Sometimes these commitments are disclosed by the client, sometimes they are not. At some point either law enforcement or a prosecutor is involved in the process. Under Morton, both have a responsibility and a duty to disclose this evidence. This is complicated by the fact that civil commitments are themselves sealed under their own statutory provisions.

So the questions to be asked, and yet to be answered include: Should law enforcement disclose to the prosecutor in the criminal case prior civil commitment contacts; Should the prosecutor disclose that information as mitigating evidence; Should defense counsel have access to civil commitment records? The answer to each of these questions is probably yes.

D. Closing of TJJJ Facilities

Texas Juvenile Justice is always changing. Currently there is an

investigation ordered by the Governor with the Texas Rangers, units have closed, lawsuits have been filed, and they have a new executive director. TJJD facilities have witnessed fights between clients, paid for by staff, and sexual assaults of juveniles. The Texas Juvenile Justice Department has closed the Corsicana Stabilization Unit which had been reserved for the juveniles with the most severe mental health issues. There are still juveniles with severe mental health issues, however, currently at least this facility is no longer an option. TJJD is not alone in this regard, a mental health facility closed in Dallas recently following one juvenile sexually assaulting another due to lack of proper supervision among other factors.

VI. CONCLUSIONS

Anyone experienced in the area of adult criminal law knows that for many years, the criminal justice system has been filled with people accused of criminal conduct who suffer from a variety of mental health issues. We have seen addiction, schizophrenia, manic-depressive disorder, bipolar disorder, schizoaffective disorder, depression, personality disorders and virtually everything in between. The largest mental health facility in the state is operated at the Harris County Jail.

We have seen an increase in the area of mental health in the juvenile system as well. During a five year period, the Texas Youth Commission released approximately 250 students

from their facilities because they were too mentally ill to benefit from the programs at TAC. Many, if not most of these juveniles were released following lengthy courses of treatment at the stabilization units. These \$1550 releases have apparently stopped in 2009. However, the author has represented two juveniles who had been released under that section in Smith County.

While overall, the number of juvenile referrals appears to be currently decreasing, the concern is that we could see an increase in the numbers of children with severe mental health issues. Narcotics are increasingly available to children as young as ten, this certainly can exacerbate underlying mental health issues.

It is imperative that counsel looks to identify clients with mental health services, because the provisions are in place for treatment in the juvenile justice system.

Appendix A

Questions to Assist you Determine Mental Health Issues

Age:

How old are you?

When is your birthday and year?

School:

What school/campus do you attend?

What grade are you in?

What subjects/classes are you taking?

Who are your teachers?

When was the last time you missed school? Why?

Health:

Who are your doctors?

When was the last time you saw a doctor, and why?

Have you ever talked with a therapist, counselor, psychologist?

Have you been to a hospital, and what were you treated for?

Are you taking any medications?

What does that medicine do?

Do the medicines make you feel better or worse, side-effects?

How often do you take the medicines?

Alcohol/drug use?

Prior Cases:

Any prior cases?

Who was involved?

What happened in court? What brought you to court then?

What judge heard the case?

Current Case:

What happened?

When did this happen?

Who could be witnesses?

General:

President/Governor/Mayor/Principal

2-4 words at beginning of interview - check recall

Reading ability

Driving ability (if age appropriate)

Orientation

Does the person know where they currently are, why you are meeting with them, what the consequences are for their situation? It is most obvious, but if the client does not realize they are in custody, or the county, there are probably issues. Ask some simple questions regarding address, the identity of the President and Governor, family members or current events. You can frequently receive a wealth of information, and you may receive information pertaining to other areas as well.

Medical History

Inquire as to any medical treatment. Frequently, clients will not tell you that they have been committed, but they may use phrases like treated or mis-diagnosed. Learn what medications they have taken in the past. Often you will hear drugs mentioned that should provide insight. If your client has seen multiple medical professionals not related to routine medical care or an acute incident, it may be an indicator that they or their family are seeking assistance for an undiagnosed mental health illness.

Behavior/Mood

How is your client acting? Does he behave appropriately for the setting? Does he interact appropriately with the people around him? Very few people are happy to be in custody, but if your client is exhibiting behavior out of the ordinary, take more time with the interview. Facilities regularly screen at intake for some basic mental health issues, among them depression and possible suicide risks. If he is sleeping all day, or not sleeping at all, inquire further. Is he speaking rapidly or so fast that he is difficult to understand? Does he appear to be extremely energetic or lethargic? Your client may tell you that he is contemplating suicide or wants to die. Take this seriously, inquire further, and if necessary alert the facility staff. Is your client excessively happy or excited? Is his mood fairly stable or does it vary from anger to hopeful or optimistic and back again or from happy to hopeless? Look for any repetitive movements or gestures. Sometimes these can indicate either a mental disorder or side effects from some of the early treatment regimens. If they act in a manner indicating intoxication, but there is no apparent source of intoxication, inquire further. Ask about what is important to them, everyone has family and interests, take the time to speak with them about their interests, family, work, projects or hobbies. Basic Abilities

Can your client drive? This involves motor skills and mental skills. If they are the appropriate age to drive, and do not or cannot, follow up to determine why they are not driving. You may learn that their family does not trust them driving, or they have a history of blackouts or other issues. Can they obtain or maintain employment? Frequently our clients are not the best employees, but if they quit employment or school suddenly, look for other indicators of bi-polar or manic behavior. Inquire as to their military service. Our military and courts have recognized that there are issues regarding post-traumatic stress disorder and how veterans are adapting to life following military service.

Affect

Is your client emotionally appropriate? Do they show emotion or vary their tone during conversation? If your client laughs at inappropriate times it could indicate several different mental issues. They may be experiencing auditory or visual hallucinations. Similarly, if the client does not respond at all or is flat, it could be an area of concern.

Thought Processes

Listen to your client. Is he able to understand the information you are conveying and convey it back to you in his own words? Does he appear to be processing information in a rational logical fashion? Are they exhibiting bizarre or paranoid thought processes or an extreme lack of trust? If your client is convinced that they are the subject of a conspiracy or government plot, you may need the assistance of a mental health professional. If he provides insight in the form of "bizarre" thoughts, inquire further as to the source of these ideas. It is also very interesting to look at his letters to you. You may see a lack of logical thinking in his writings, or diagrams added which indicate issues.

Facility concerns

Every facility has medical treatment areas and confinement cells called different names in each facility. If your client is in a solitary cell and it is located on the same floor as the clinic, inquire of the jail staff. In the larger counties, there are even mental health wings, and you should know if your client is located there. The deputies are a tremendous source of information about your clients, watch them for signs when they bring your client to meet with you. In East Texas, frequently a deputy or bailiff will comment that a person is "10-99"

Appendix B

Sample Motion for Fitness to Proceed Evaluation

NO. CCL3-xx-xxxx

IN THE INTEREST OF	§	IN THE COUNTY COURT
	§	AT LAW NO. 3 OF
	§	SMITH COUNTY, TEXAS,
	§	SITTING AS A
B.T.	§	JUVENILE COURT

MOTION TO DETERMINE UNFITNESS TO PROCEED AS A RESULT OF MENTAL ILLNESS OR MENTAL RETARDATION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, Counsel for B.T. in the above entitled and numbered cause, and makes this Motion to Determine Unfitness to Proceed as a Result of Mental Illness or Mental Retardation, and would show the Court as follows:

I.

This motion is brought pursuant to §55.31 of the Texas Family Code. Counsel for the Respondent requests the Court to make a determination as to whether the child respondent lacks the capacity to understand the proceedings in juvenile court or to assist in the child’s own defense and, thereby, is not fit to proceed in juvenile court. Counsel further requests that the Court stay the juvenile court proceedings and order the child respondent to be examined pursuant to §51.20 of the Texas Family Code. Counsel further requests that the Court hold a final hearing on this matter upon receipt of the examination results.

WHEREFORE, PREMISES CONSIDERED, Counsel for Respondent prays that this Honorable Court grant this motion and stay the juvenile court proceedings, order the Respondent to be examined pursuant to §51.20 of the Texas Family Code, and hold a hearing upon receipt of the examination results.

Respectfully submitted,

JIM HUGGLER
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CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing the Respondent's Motion to Determine Unfitness to Proceed or Mental Retardation was delivered to Jeff Sanders on the 28th day of December, 2006

Jim Huggler

IN THE INTEREST OF	§	IN THE COUNTY COURT
	§	AT LAW NO. 3 OF
	§	SMITH COUNTY, TEXAS,
	§	SITTING AS A
B.T.	§	JUVENILE COURT

ORDER TO EXAMINE FOR LACK OF RESPONSIBILITY FOR CONDUCT AS A
RESULT OF MENTAL ILLNESS OR MENTAL RETARDATION

_____ is appointed to examine B.T., a child, under §51.20 of the Texas Family Code with regard to whether he is unfit to proceed in juvenile court as a result of mental illness or mental retardation under §55.31 of the Texas Family Code. B.T. is ordered to submit to the exam. The examination must be performed by a doctor trained in making the mental illness and mental retardation evaluations for legal proceedings using the following definition:

“Unfitness to proceed” means the child lacks the capacity to understand the proceedings in juvenile court or to assist in the child’s own defense as a result of mental illness or mental retardation.

The examination report shall include a description of the procedures and tests used in the examination and the examiner’s observations and findings pertaining to whether or not the child is fit to proceed in juvenile court as a result of mental illness or mental retardation. If the results of the examination conclude that the child is not fit to proceed in juvenile court, the report shall include an opinion as to whether the child has mental illness or mental retardation.

If the results of the examination conclude that the child is a person with mental illness and/or mental retardation, the report may include an opinion as to whether or not the child meets the criteria for court ordered in-patient mental health services or commitment to a residential care facility under Subtitles C and D, Title 7, Health and Safety Code.

Signed this _____ day of _____, 20____.

JUDGE PRESIDING

